

Public Procurement and Manufacturing Diversification in Oman

A Report for UNIDO

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Public Procurement and Manufacturing Diversity in Oman¹

Chapter 1. Introduction

1.1 Overview

This report focuses on the role of public procurement law and policy in achieving the Oman Vision 2040 targets on diversifying the manufacturing industry. Oman, as many of the Arabian Gulf countries, is heavily dependent on oil and gas; however, its oil reserves are estimated to be at 0.3% of the world's reserves, which can cover 20 years, while the gas reserves, at 18.5%, can cover 36 years.² Since 1970, oil and gas has been the main source of revenue for Oman's economy. In 2019, the estimation of government revenue was 10.1 billion Omani riyals, with oil and gas revenues accounting for 7.4 billion Omani riyals and non-oil revenues, 2.7 billion Omani riyals. Here, the estimation shows that 74% of the total income of Oman's revenues comes from oil and gas and 26% from non-oil and gas industries.³ In contrast, in 1978, 91.2% of the total government revenue came from oil and gas and 8.8%, from non-oil industries.⁴

Oman has a population of 4.7 million in 2019, of which 46% were expats.⁵ In a 2015 analysis of the broader manufacturing sectors, foreigners accounted for approximately 75% of the manufacturing workforce. The labour force in manufacturing is predominately male. However, the females that are employed are mostly Omani rather than expats (86%).⁶ The Omani population is generally well-educated. The illiteracy rate is only 4.0%, and this primarily stems from people over the age of 45; under 40 years old is under 2%. Vocational and technical education is relatively uncommon in Oman. In 2017, there were only 3,027 students enrolled in vocational education. At the university level, engineering graduates are primarily from public universities and management graduates from private schools.⁷

Oman's industrial sector is a key element in its long-term development strategy, providing significant employment and wealth across a wide range of sectors. There have been some positive indications that Oman is progressing towards its goals. In 2018, Omani manufacturing grew by 17.8% year-on-year in the first quarter of 2018, outstripping overall GDP growth rate of 6.5% for that period. This growth in manufacturing helped to help drive the broader industrial sector, which grew by 2.6%. This lifted the sector's share of non-oil GDP from 45.3% in 2016 to 48.6% in 2018.⁸

Nevertheless, Oman's economy well-being remains highly vulnerable to the international oil market. The 2019 downturn in oil revenue, along with OPEC production cuts, contributed to a lower growth rate than the IMF prediction of 1.1% growth.⁹ The budget deficit rose from 0.3% of GDP in 2013 to a high of 21.2%

¹ This report was commissioned by UNIDO for the Omani Government, to support the diversification of manufacturing under the Omani Vision 2040. Fieldwork took place in December 2019, involving interviews with many government officials. I would like to thank them for their time. I would particularly like to thank Mr Ali Hamed Salim Al Hashmi for his invaluable insights and support, and Rachel Pugh for her research assistance.

² BP Statistical Review of World Energy (2019, 68th edition). Reserves-to-production (R/P) ratio – If the reserves remaining at the end of any year are divided by the production in that year, the result is the length of time that those remaining reserves would last if production were to continue at that rate.

³ Oman Yearly Budget 2019.

⁴ Oman Yearly Budget 1978.

⁵ CIA World Fact Book. Oman. Accessed at: https://www.cia.gov/library/publications/the-world-factbook/geos/print_mu.html

⁶ *Ibid.*

⁷ NCSI. Statistical Yearbook: Data for 2016 (Vol. 45, pp. 447). Muscat, Oman: National Center for Statistics & Information (NCSI) (2017).

⁸ Oxford Business Group. Oman Year in Review. 2019 Accessed at: <https://oxfordbusinessgroup.com/news/oman-year-review-2019>

⁹ *Ibid.*

in 2016, and is expected to moderate to 7.2% in 2019, while government debt rose from 4.9% of GDP in 2013 to 58.7% in 2019.¹⁰

This report assesses the potential for Oman to utilize public procurement to support its development strategy in the short and medium-long term. It first looks at the trends and challenges in Oman's industrial development, before focusing on the current public procurement Tender Law. The report then identifies options for deploying public procurement law and policy to promote industrial diversification in priority manufacturing sectors; innovation and small and medium sized enterprises. It concludes with a summary of the main findings.

¹⁰ *Ibid.*

Chapter 2: Trends, challenges and priorities in Oman's industrial development

2.1 Trends in industrial development

Since 1976, Oman has focused on diversification through developing new manufacturing industries. The main element of the first five-year plan has been to develop the non-oil and gas industries, and the government has heavily invested in the country's infrastructure (i.e. electricity, transportation, communication, etc.) to attract investors and improve private investment.¹¹ Here, it can be seen that the improvement between 1978 and 2019, a period of 41 years, was only 8.4%. In 2018, industrial growth trends of non-oil activities grew by 2.9% in 2018, contributing 20.8 billion Omani riyals to the GDP.¹² Oman needs to diversify and develop the industry more rapidly to sustain Oman's economy.

Oman has several strengths that will help it in achieving these objectives. First of all, Oman has excellent access to resources, such as oil, gas, a long coastline, farmland and other minerals. Oman has a favourable geostrategic location, good political stability and good relations with other countries. Oman has already built excellent infrastructure, such as free zones, airports and roads that are linked by many ports to the rest of the world.¹³ Also, almost half of Oman's population are youth,¹⁴ and 87% of unemployed youth in Oman have higher education qualifications.¹⁵ The focus in Oman has shifted towards employability in both the government and private sectors. According to the past statistical year, in 2018, 113,593 men and 82,218 women worked in the government sector., while 187,090 men and 65,042 women worked in the private sector respectively; indicating that more Omani's work in the private sector than in the government sector.¹⁶

Oman's 2020 vision regarding industrial development

In response to industrial development, Oman Vision 2020 in 1995 was a major step that moved industrial development forward.¹⁷ The main objective of the vision of 2020 was developing and diversifying Oman's industry to transform Oman's economy into one that would no longer be reliant solely on oil and gas by 2020. Also, Vision 2020 identified several objectives for industrial development:

1. Promoting economic diversification by fully utilising all available natural resources and other natural advantages (such as, Oman's favourable geographic position)
2. Inducing private sector development for the sustainable production of goods and services; promoting consultative mechanisms between the private sector and government
3. Facilitating the intensification of the economy's integration into the global economy through free trade and appropriate economic relations with other countries

Oman's 2040 vision regarding industrial development

Oman's 2040 vision is to achieve industrial development and to increase the revenue from non-oil industries to more than 90% by 2040.¹⁸ This direction of vision will play a significant role in shaping the Sultanate's economy and generating critical employment opportunities. Oman has a vision to build an economic

¹¹ Oman Development Five Years Plan 1976-1981.

¹² The National Centre for Statistics and Information (NCSI), Analysis of the economic situation in the Sultanate : Fourth Quarter 2018, < available from <https://www.ncsi.gov.om/Elibrary/Pages/LibraryContentDetails.aspx?ItemID=lbhnsyDT4SyiOrBeyYRmKA%3d%3d>> accessed on 23/10/2019.

¹³ PKF International, *Doing Business in the Sultanate of Oman*.

¹⁴ National Centre for Statistics and Information, *Statistical Year Book 2019*.

¹⁵ Ministry of Higher Education, *Graduate Survey 2017*.

¹⁶ National Centre for Statistics and Information, *Statistical Year Book 2019*.

¹⁷ <https://www.scp.gov.om/en/Page.aspx?I=14>

¹⁸ <https://www.2040.om/en/>

leadership and management and a strategic plan for economic diversification and fiscal sustainability; it sets out six main objectives:

1. To identify, every five years, sectors that drive economic diversification and other complementary sectors
2. A competitive, diversified, and integrated economy based on foresight, innovation, and entrepreneurship
3. Informed, integrated, and sustainable fiscal, monetary, and economic policies, and budgets that ensure effective use of public revenues
4. Regulatory environment and governing legislations that are renewed, flexible, up to date, ensuring equal opportunities.
5. Advanced basic and IT infrastructure that empowers all sectors, capable of keeping pace with the latest developments and cyber security challenges
6. A research and development ecosystem spanning the various sectors and institutions

Oman Vision 2040 has drawn up an ambitious list of targets for 2040, including:¹⁹

- having a more than 90% non-oil share in GDP; having 40% of national jobs created in the private sector;
- having 50% real GDP growth; increasing real GDP by 90% per capita;
- having a value greater than 76.6 in, or being in the top 20 countries of the Global Competitiveness Index;
- having a value greater than 83.2 in, or being in the top 10 countries of the skills portion of the Global Competitiveness Index;
- having a value greater than 51.98 in, or being in the top 20 countries of the Global Innovation Index; having a value of greater than 1.8 in, or being in top 10 countries of the government effectiveness portion of the Worldwide Governance Indicators;
- having a value of more than 74.69 in, or being in top 20 countries of environmental performance index; and having net inflow from foreign direct investment (FDI) make up 10% of GDP.
- developing Omani industry and diversifying the national economy focused on ten economic sectors:
 - i. manufacturing,
 - ii. transport,
 - iii. logistics,
 - iv. tourism,
 - v. fisheries,
 - vi. mining,
 - vii. financial services,
 - viii. information communication technology,
 - ix. education and
 - x. healthcare.

2.2 Diversification in Omani industry

The plan for the Omani economy is to move towards a robust base of economic diversification with a focus on technology, knowledge and innovation. The strategy also aims at reinforcing upstream and downstream integration among economic sectors to expand the production and export base, diversify trading partners, deepen investment in high value-added sectors, and enhance the contribution of non-oil sectors to the GDP. Achieving this diversity and integration highly depends on developing local capabilities

¹⁹ <https://www.2040.om/en/>

in innovation and creativity, promoting entrepreneurship, along with preparing a fertile legislative and incentives ground.

Here is an outline the diversification of Oman industry:

- The food and beverage industry comprises sectors such as fish processing, meat and poultry, fruits and vegetable processing, dairy processing, bakery and confectionery, mineral water, and animal feed. In 2011, Oman Foods and Beverage Industry produced 20% of Oman food requirements and 80% of Oman foods requirements were imported.²⁰

In 2018, the agriculture sector contributed 414.0 Omani riyals to the GDP. The fishing sector contributed 253.0 Omani riyals to the GDP.²¹ The government now is working to establish some projects to improve the foods and beverage industry, e.g. Mazoon Dairy Project, Phase 1 of A'Namaa Project, Osool Poultry SAOC Plant, Seafood Canning Plant, Al Bashayer Meat Project, Table-Egg Production Plant, and Dhofar Seafood Canning Plant.²²

The Food Cluster being developed at Sohar Port and Free zone aims to drive further integration between the port and free zone complex. The aim of this cluster is to promote the entire value chain of food processing and logistics support within the expanding multibillion-dollar regional food industry.²³

- The plastic and rubber industry is growing rapidly in Oman and the figures show 20.4% of growth in 2010 due to high investment and adoption of new technology.²⁴ The government is working to establish some new projects to improve this industry such as Salalah LPG Project Realisation of PET Plastics Plant, Liwa Plastics Project, etc.²⁵
- The pharmaceutical and health industry showed a decline in gross profit and revenue by 22.6% in 2010. Also, the number of employees worked in the pharmaceutical industry declined by 26.7% in 2010. However, the Ministry of Health in Oman designed vision 2050 to improve the quality of health care system and establish a national health policy.²⁶ There are some Pharmaceutical factories in Oman for example National Pharmaceutical Industries Co. (SAOG). Also, the government now is working to establish some new projects to improve the pharmaceutical industry, e.g. Realisation of Philex Pharma Complex.²⁷
- The metal industry comprises sectors such as iron, steel, and ferrous metals. The metal industry in Oman is improving; the gross profit increased to 272.0 million Omani riyals in 2010 compared to 217.0 million Omani riyals in 2009. Also, the number of employees increased to 5270 employees in 2010 compared to 4686 in 2009.²⁸ Also, the government is working to establish some new projects to improve the metals industry in Oman, for example, Alloy Wheels Manufacturing Facility, Oman Flange Production Factory LLC (OFPF), Plant to Design and Manufacture Metal Dyes and Moulds, Raysut Steel Company's Product Plant, and MISCO Steel Rebar and Billet Production Plant.²⁹

²⁰ Ministry of Commerce and Industry, Annual Industry Report 2014.

²¹ National Centre for Statistics and Information, Statistical Year Book 2019.

²² The Implementation Support and Follow-up Unit (ISFU), Annual Report 2017 and 2018.

²³ <https://www.businessliveme.com/economy/manufacturing/industry-insights-omans-manufacturing-sector/>

²⁴ Ministry of Commerce and Industry, Annual Industry Report 2014.

²⁵ The Implementation Support and Follow-up Unit (ISFU), Annual Report 2017 and 2018.

²⁶ Ministry of Commerce and Industry, Annual Industry Report 2014.

²⁷ The Implementation Support and Follow-up Unit (ISFU), Annual Report 2017 and 2018.

²⁸ Ministry of Commerce and Industry, Annual Industry Report 2014.

²⁹ The Implementation Support and Follow-up Unit (ISFU), Annual Report 2017 and 2018.

- A central component of Sohar Aluminium's strategy is to promote and support the growth of downstream aluminum industries within the Sultanate. A new factory that is being set up in Sohar to manufacture alloy wheels with an export value targeted at upwards of RO20mn is expected to generate up to 500 jobs for talented local workers across the 12 steps of its production process. Sohar Aluminium Plant, located next door to the alloy wheel manufacturing facility, will supply 45 per cent of the raw materials needed for the proposed output.³⁰
- Brazil's mining giant Vale, the world's No.1 iron ore and nickel producer, invested around \$2bn in its pelletizing plant in Sohar with a nominal capacity of 9 million tonnes of pellets per annum connected with a distribution center with 40 million tonnes of handling capacity. In November 2018, Vale signed a four-year contract with Emirates Steel, the largest steel producer in the United Arab Emirates, to supply iron ore pellets for the Arabian company's steel production in Abu Dhabi. ³¹
- The non-metallic mineral industry comprises sectors such as cement, limestone, blocks, tiles, ceramics, marble, granite, glass, ready-mix, and crusher. In 2018, mining and quarrying sector contributed 144.8 Omani riyals to the GDP.³² Oman considers the non-metallic mineral sector a priority and it has plans to improve this sector, so in addition to existing factories, vision 2040 will focus on some more projects such as Al Wusta Grey Cement Clinkerisation Plant, Al Taj Grey Cement, Al Anwar Hormuz Cement Company' Cement Grinding Unit in Duqm, and Sohar Cement Factory's Cement Grinding Unit in Sohar.³³

Oman has the GCC's first glass recycling plant, Global Glass, a fully-automated facility with a production capacity of 650-tonnes per day. The plant is particularly designed to meet the needs of varied glass manufacturers within the GCC region in terms of specifications, volumes and pricing.³⁴

- The chemicals industry comprises some sectors such as fertilizers, paints, and detergents. The capital formation in the chemicals industry declined by 61.8% in 2010 and reached 328.0 million Omani riyals due to oil price. However, in 2009 the capital formation in the chemicals industry was 858.7 million Omani riyals.³⁵ In 2018, manufacturing of refined petroleum products sector contributed 427.4 Omani riyals to the GDP, manufacturing of chemicals and chemical products contributed 1244.1 Omani riyals to the GDP, and other manufacturing contributed 1242.9 Omani riyals to the GDP.³⁶ In addition to existing factories, vision 2040 plans on establishing some more projects such as Duqm Refinery, OMPET's PTA Plant, OCTAL capacity utilisation enhancement, Salalah Methanol Company's Ammonia Plant, Sebacic Acid Production Plant Sohar Asphalt LLC, and Sohar Bitumen Refinery.³⁷

Sebacic Oman Refinery, the first industrial project in the heavy industries zone, entered the production stage in February 2019. The refinery is the first of its kind in the Middle East for the production of Sebacic acid extracted from castor oil and used in many chemical, plastics and pharmaceutical industries, as well as a feedstock in the manufacture of disinfectants, paints and perfumes. This product of high economic value encourages the establishment of other industries.³⁸

³⁰ <https://www.businessliveme.com/economy/manufacturing/industry-insights-omans-manufacturing-sector/>

³¹ <https://www.businessliveme.com/economy/manufacturing/industry-insights-omans-manufacturing-sector/>

³² National Centre for Statistics and Information, Statistical Year Book 2019.

³³ The Implementation Support and Follow-up Unit (ISFU), Annual Report 2017 and 2018.

³⁴ <https://www.businessliveme.com/economy/manufacturing/industry-insights-omans-manufacturing-sector/>

³⁵ Ministry of Commerce and Industry, Annual Industry Report 2014.

³⁶ National Centre for Statistics and Information, Statistical Year Book 2019.

³⁷ The Implementation Support and Follow-up Unit (ISFU), Annual Report 2017 and 2018.

³⁸ <https://www.businessliveme.com/economy/manufacturing/industry-insights-omans-manufacturing-sector/>

- The tourism industry is one the main industries to diversify Oman's economy and to create jobs. The Ministry of Tourism is planning to improve the tourism in industry in Oman, so that by 2040, it is a top destination for vacations and discovery. Also, the ministry aims to attract 11 million tourists every year.³⁹ Tourism industry contributed 2.6% in the GDP in 2018, compared to 2.7% in 2017. Also, 2% was the increase in the number of inbound visitors to the Sultanate in 2018 compared to 2017, reaching nearly 3.2 million compared to 3.1 million in 2017.⁴⁰
- The clean energy industry is the main aspect of vision 2040 which set a goal to diversify resources available to generate electricity to reach 11% of renewable energy resources by the year 2023.⁴¹ Also, the government is working to establish new projects to improve the metals industry in Oman, for example, utilisation of its solar energy resources through four different projects with total capacity reaching 1600 MW. The investment value for the projects of this initiative reaches over 616 million Omani riyals. In addition, Oman is looking at smart usage of wind energy potential by establishing a new wind power project called 'Wind 2023' with 200 MW capacity to be operational by 2023.⁴²

To tap into the Sultanate's renewable energy potential, Sohar Port and Free zone has a land lease agreement with Shell Development Oman (SDO). This agreement means that businesses in the Sohar Free zone could be powered by solar photovoltaic (PV) projects instead of gas. In line with the partnership, Sohar Free zone will allocate 600-hectares of land for solar plants under development, with capacities ranging from 10MW up to 40MW.⁴³

In sum, Oman's economy is becoming more diverse. However, at present, the production in many industries, including solar panels, fabricated metal products, food and beverage, fragrances and pharmaceuticals does not cover all of Oman's needs and requirements. As a result, Oman meets its full requirements by importing from other countries.

³⁹ Ministry of Tourism, available from < <https://omantourism.gov.om/wps/portal/mot/tourism/oman/home> > accessed on 23/10/2019.

⁴⁰ National Centre for Statistics and Information, Statistical Year Book 2019.

⁴¹ The Implementation Support and Follow-up Unit (ISFU), the Outcomes of Energy Lab (Fire for Knowledge and Aspire March 18 April 26 2018.

⁴² The Implementation Support and Follow-up Unit (ISFU), Annual Report 2017 and 2018.

⁴³ <https://www.businessliveme.com/economy/manufacturing/industry-insights-omans-manufacturing-sector/>

Figure 1: Composition of Oman's manufacturing sector – 2016 (% MVA)²³
(Source: MOCI [2016] Industrial Statistical Survey)

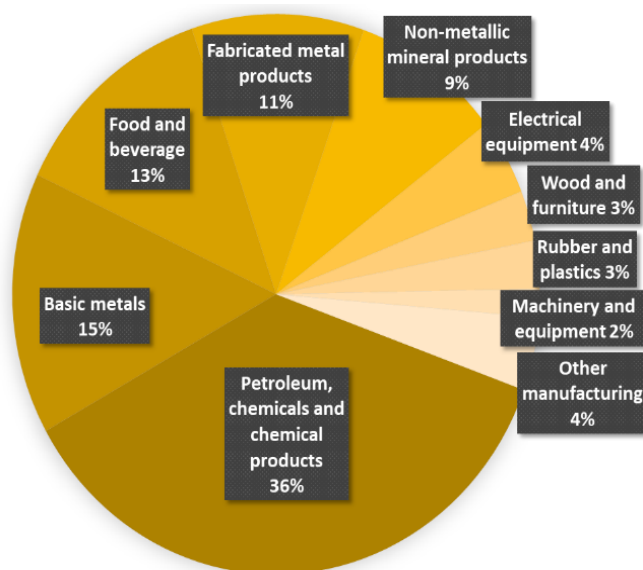
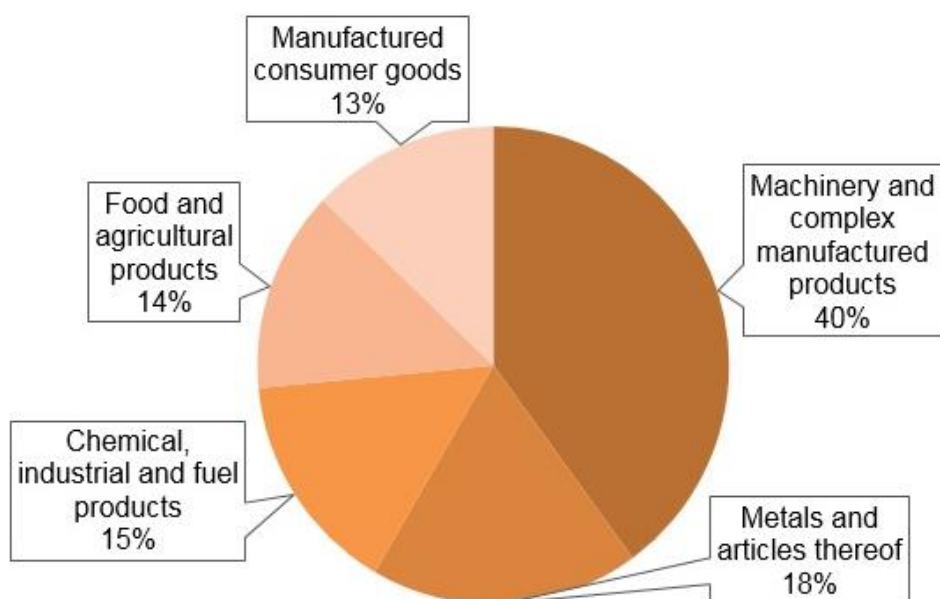


Figure 2: Oman: Major Commodities Imports 2017⁴⁴



⁴⁴ Oman Market Profile. HKTDC Accessed at: <http://china-trade-research.hktdc.com/business-news/article/The-Belt-and-Road-Initiative/Oman-Market-Profile/obor/en/1/1X000000/1X0A3O00.htm>

2.3 Emerging priorities in Oman's industrial strategy in 2040: the role of public procurement

2.3.1 Emerging priorities in Oman's industrial strategy

The Omani government has taken several steps to implement the Vision 2040. One of the major diversification policies takes the form of offsets. Offsets are commonly used government measures for stimulating national economies, often in conjunction with a development strategy. Offsets are formally defined by the World Trade Organisation as 'measures used to improve local development or improve the balance-of-payments accounts by means of domestic content, licensing of technology, investment requirements, counter-trade or similar requirements.'⁴⁵ In Oman, offsets are known as Partnerships for Development (PFD).

The first PFD was introduced in the late 1990's by the Ministry of Defence (MOD) and was applicable only to defense procurements. Since then, PFDs have expanded and offsets are now implemented in the oil and gas sector through the In-Country-Value (ICV) programme and general public procurement tendering requirements. Oman's PFDs and the ICV programme fall under the remit of the newly formed Public Authority for Partnership and Privatisation (PAPP), established in 2019 incorporating the Omani Authority for Partnership for Development (OAPFD). The objective of the PAPP is to ensure that all units of the State Administrative Apparatus and the companies in which the Government share is more than 50% should apply the PFD programme in all procurement contracts which exceed 5,000,000OR with foreign companies and with local companies where foreign content is involved.⁴⁶ Under Oman's 2008 Tender Law, PFD offsets are implemented in the form of specific conditions imposed by governments on supplying firms essentially as means to ensure a degree of local content or local participation. For supplying firms, offsets constitute additional conditions set out in tender documentation that are not directly related to the relevant procurement, further discussed in Chapter 3.

The PAPP now also oversees Oman's In-Country-Value (ICV) 2013 Blueprint Strategy. This is an offset programme that aims to ensure that the country gains additional benefits to the economy beyond the direct contribution of selling the extraction of exhaustive resources like oil and gas. ICV is calculated as the total spend retained in-country that benefits business development, contribute to human capability development and stimulate productivity in the Omani economy. The ICV programme encompasses a set of seven elements which are factored into the tender evaluation criteria of which bidders are evaluated upon accordingly. These same ICV elements play a key role in evaluation criteria alongside quality and commerciality:

1. Investments in Fixed Assets
2. Omanisation in the Work Force
3. Training of Omanis
4. Local Sourcing of Goods
5. Local Sourcing of Subcontracted Services
6. Development of National Suppliers
7. Development of National Training, Education and R&D Institutions

There are two main objectives for implementing the ICV offset programme. One is to build a workforce that is trained to international standards, through increasing Omanisation and developing the skills of the national workforce. The other is to build effective and resilient domestic supply chains through increasing in-country spend on local goods and services. ICV offsets requiring local content can encompass forward, lateral and backward linkages. Of importance to Oman are the backward linkages: those created by the commercial relations between operators and their supply chains, which include the transfer of technology and know-how, employment of nationals, and sourcing local goods and services; and the lateral linkages:

⁴⁵ Article IV. World Trade Organisations Government Procurement Agreement (WTO GPA).

⁴⁶ Article 3. Royal Decree No 2019/54 Establishing the Public Authority for Partnership and Privatisation and Promulgating its System.

those which utilize the demand of the sector to develop skills, services and infrastructure that can positively impact on other sectors of the economy while allowing locals to participate in the supply chain.⁴⁷

In Oman, companies obtaining a high ICV score are viewed as a responsible partner and benefit from special status. Establishing local manufacturing capabilities can also help operators shorten the lead times for sourcing of goods and minimize the working capital and inventory required. As a part of the offset programme, an electronic system called Ta'ziz has been introduced to offer Omani companies, including SMEs, a chance to participate in multinational projects and contribute to ICV.

Offsets and International Trade Rules

Offsets have the potential to operate as an obstacle to both international trade in goods and services, as well to foreign direct investment. This is because the restrictions can impair a foreign investor or firms' abilities to enter or compete in the domestic market. Within investment, offsets are seen as performance requirements because they set conditions on foreign firms by host states - such as requiring foreign firms to use a certain amount of local content. While offsets can be discriminatory in as much as they promote domestic goods and services above those which are produced internationally, offsets do not necessarily aim to exclude foreign bidders, if all bidders in the procurement process are subject to the same offset conditions regardless of their national origin.

Under the World Trade Organisation (WTO), offset measures may violate several national treatment provisions in the WTO Agreements if they discriminate through offering less favourable treatment to foreign firms, which affects their competitiveness in the domestic market. There are also rules controlling the use of performance requirements, such as offsets that are imposed on foreign investors under the Trade-Related Investment Measures Agreement (TRIMs), which applies to goods but not services. An illustrative list of types of measures that are inconsistent with GATT national treatment provisions and violate Article 2.1 of the TRIMs states that prohibited trade-related investment measures include those measures which require: *the purchase or use by an enterprise of products of domestic origin or from any domestic source, whether specified in terms of particular products, in terms of volume or value of products, or in terms of a proportion of volume or value of its local production.*

Additionally, the WTO Agreement on Subsidies and Countervailing Measures (SCM) prohibits subsidies that are contingent upon the use of domestic over imported goods.⁴⁸ Subsidies are a financial contribution by a government or any public body that provides a benefit and is specific.⁴⁹ However, a benefit conferred under an offset or local content scheme does not automatically constitute a 'financial contribution'. As a result, the legality of offsets under the SCM is not settled and there is a body of complex jurisprudence on the application of these rules to offsets.⁵⁰

⁴⁷ Forward linkages involve the construction of facilities that process and export these resources, such as refineries and petrochemical facilities. In return for access to new sources of oil, governments (and communities) in producing countries expect jobs, capacity-building, meaningful local content and the maximization of in-country value.

⁴⁸ The Agreement on Subsidies and Countervailing Measures Article 3.1(b).

⁴⁹ A specific subsidy is one that is only given to one company, or to a special group of companies. See: https://www.wto.org/english/tratop_e/scm_e/subs_e.htm

⁵⁰ See WTO disputes: Canada – Certain Measures Affecting the Renewable Energy Generation Sector Appellate Body Report, WT/DS412/AB/R, DS426/AB/R (6 May 2013); EU and Certain Member States – Certain Measures Affecting the Renewable Energy Generation Sector, Request for Consultations by China, WT/DS452/1 (7 Nov. 2012); India – Certain Measures relating to Solar Cells and Solar Modules, Request for Consultations by the United States, WT/DS456/1 (11 Feb. 2013); EU and Certain Member States – Certain Measures on the Importation and Marketing of Biodiesel and Measures Supporting the Biodiesel Industry, Request for Consultations by Argentina, WT/DS459/1 (23 May 2013).

Under the WTO Government Procurement Agreement (GPA), offsets are prohibited pursuant to Article IV.6, which states that with regard to *covered* procurement, a Party, including its procuring entities, *shall not seek, take account of, impose or enforce any offset*.⁵¹ However, this prohibition is only applicable to the procurement markets and entities that the negotiating parties incorporated into their schedules of commitments. Many signatory parties include explicit carve-outs or exemptions for their existing offset policies. For example, the US Schedules under Annex 7.1 state:

“This Agreement does not apply to any set aside on behalf of a small- or minority-owned business. A set-aside may include any form of preference, such as the exclusive right to provide a good or service, or any price preference.”⁵²

Additionally, for developing countries, special and differential treatment permissions set out under Article V, state that based on its development needs, and with the agreement of the Parties, a developing country may adopt or maintain transitional measures such as a price preference programme or offset provided that any requirement for, or consideration of, the imposition of the measure is clearly stated in the notice of intended procurement.

This means that should Oman or the GCC accede to the GPA, not only may it permanently exclude specific sectors and government entities from the coverage of the rules, but it may also be able negotiate transitional offsets, as long as they do not favour goods or services from one signatory state over another one. Infant industry assistance can be used as a development tool, but not as a means of according preferences based on political alliances between states.

Figure 3 Offset programmes in public procurement tender specifications:

Brazil	<ul style="list-style-type: none"> Local content targets for goods and services Concessional financing for local suppliers from the national development bank of Brazil
Tobago & Trinidad	<ul style="list-style-type: none"> Employment of nationals: work permits would only be issued if no suitable local is found to carry out the job, this measure is strictly monitored by the ministry of national security. Targets for local sourcing of goods and services Fiscal incentive act granting tax holidays for up to 10 years for the establishment of local manufacturing capabilities.
Angola	<ul style="list-style-type: none"> Workforce should comprise min 70% locals and 36 months cap on contracts for foreign workers. Preference for local companies especially those with over 51% Angola ownership in the award of contracts. Inclusion of training of Angolan staff in production costs where costs in corporate income tax are deducted.
Kazakhstan	<ul style="list-style-type: none"> Target of 90% local workforce for technical personnel, Expatriate work permits are ring fenced and mobility restricted. Companies allocate funding for the training of Kazakhstan staff 20% Price Preference for Local companies holders of CT-KZ certificate

⁵¹ *Ibid.*

⁵² <https://e-gpa.wto.org/en/Annex/Details?Agreement=GPA113&Party=UnitedStates&AnnexNo=7&ContentCulture=en&AdvancedSearch=False>

- Minimum Levels for Local Content:
 - Public enterprises 11% for Goods and 82.5% for Services
 - Private Enterprises 20% for Goods and 15% for Services
- Incentives for local companies
 - Interest Free Loans
 - Advanced Payments for contractor equipment
 - Technology Transfers

Indonesia

- Regulations controlling the requirement of local workers, their salaries and re numerations
- Restricting positions that can be filled by expatriates.
- Margins of preference for domestic suppliers
- Local content targets for the procurement of goods
- Exemption of import duties on machine or equipment needed for production in the downstream sector

Malaysia

- Contractors encouraged to employ nationals: Restriction applied on foreign workers through linking the size of paid capital to the amount and types of expat work visas issued.
- Local Content Incentives:
- High priority companies are partially exempted from paying income tax for 5 years.
- Companies operating on technology and research activities may qualify for tax and regulatory exemptions.

Internationally, some offset policies have been successful at leveraging the activities of the petroleum sector to create domestic economic opportunities. Countries such as the United Kingdom and Norway developed successful policies in the 1970s and 1980s to enhance the economic benefit of exploiting their natural resources. At around the same time in the 1970s, Trinidad and Tobago created value through the industrialization of its natural gas, which had previously been flared. Similarly, following its vast offshore oil discoveries in 2006, Brazil made the most of the resulting demand for sea transportation to enhance its own shipbuilding capabilities. Nigeria, a pioneer in African local content development, set rigorous targets by adopting legislation in 2010 to encourage Nigerian participation in domestic oil-related activities.⁵³

However, economic literature and historical experience show how difficult it is to achieve offsets and develop local content. Common pitfalls of poorly designed offset policies include:

- Lack of strategic direction and long-term objectives in regard to industrialization, economic diversification and strengthening of value creation may focus on the easy 'low hanging fruits' of local content activities and miss out on opportunities to create in-country value.
- Poorly designed implementation strategies that make measurement and reporting too complex or prescriptive, and do not properly consider the capacity of the regulator(s) to monitor and measure performance, can lead to poor enforcement or conditions that facilitate influence peddling or corruption of public officials.
- Benefits are captured by local elites favouring rentier attitudes rather than competitive solutions. In many new producing countries, the tax base is very low, which encourages political incumbents to seek other sources of income and to use patronage to secure political loyalty. Consequently, they may offer supply contracts to local entrepreneurs to reward political loyalty and to companies run by family members of the ruling elite. Local content in such instances fails to encourage entrepreneurial development and instead promotes rentier behaviour.

⁵³Valérie Marcel, Roger Tissot, Anthony Paul, Dr Ekpen Omonbude. A Local Content Decision Tree for Emerging Producers. Chatham House. Energy, Environment and Resources Department. 2016. 2.

- Poor access to information and limited understanding of demand and scheduling by local suppliers and training institutions. Lack of reliable information on availability, competencies and experience of local suppliers and individuals cause operators and their international suppliers to seek outside sources.
- Offsets are often a later consideration in the planning process and opportunities for optimizing local content are missed.

Legislative Changes for Implementation

Oman's legislative institutions are also working to regulate, renew, and update Omani rules and regulation. The focus here is on rules and legislations related to industrial development and public procurement policies for promoting diversification in manufacturing in Oman. These new laws reflect Oman's desire to present its economy as a free market attractive to all investors and the importance to Oman of preserving its economic significance in the GCC.⁵⁴

Most directly, the **Royal Decree Tendering Law 36/2008** replaced the earlier Royal Decree 86/1984 Law and System of government tendering, and the tender council-issued decision 25/09/2010 on the Implementing Regulations of the Tender Law. A full analysis of this Law is presented in Chapter 3. However, it was not possible to obtain an English language version of the Tender Regulation during the field trip. This was because the translation drafted by the Tender Board has not yet been approved by the Ministry of Legal Affairs (MOLA).

Oman has also established a **Public Private Partnerships Law (Decree No. 52/2019)**, which sits alongside the new **Privatization Law (Decree No. 51/2019)**. Both laws create a high level framework under which PPP and privatization opportunities will be offered to the market. The associated implementing regulations for both the PPA Law and the Privatization Law are not available until 2020. Under the PPP Law, the Public Authority for Privatization and Partnership is empowered as the body to control PPP projects. The Authority is obligated to take the lead in preparing, evaluating, negotiating and awarding tenders for PPP projects; in consultation with the relevant Ministry. Although the Authority must seek Ministry of Finance Approval before launching a project. All PPP projects must offer "economic or social" return and conform with Oman's "strategy and development plan". These requirements offer a very wide discretion over the areas in which PPP projects can be offered.

The Tender Law (Decree No. 38/2008) does not apply to projects under the PPP Law or the Privatization Law, or consultancy contracts associated with either law. Ministries retain the responsibility for managing PPP projects. A specific appeals process is created under the law for disputes relating to the tender process, project award or implementation. This appeal provision appears in both the PPP Law and the Privatization Law. It is yet known how this interacts with the court system and arbitration mechanisms. Under the PPP Law Direct approaches by developers are permitted and direct awards without a tender can be made, subject to the approval of the Council of Ministers. The PPP law does not have any impact on public utilities or government bodies.

Of further relevance is **Royal Decree No. 67 of 2014 Competition Protection and Control of Monopoly Law ("Competition Law")**. Oman's Competition Law has some similarities with equivalent legislation adopted by other members of the Gulf Co-operation Council and also in the EU under Articles 101 and 102 of the Treaty on the Functioning of the European Union. The law introduces a new merger control regime, as well as prohibiting restrictive agreements and abuse of market dominance. It also bans agreements or arrangements that are aimed at the monopolisation of markets. The law does not apply to the activities relevant to the public facilities fully owned or controlled by the Sultanate of Oman, or to research and development. These developments are positive. Market competition stimulates firms to attract to customers through lower prices and improved quality of their products and services. When competition

⁵⁴ <https://www.omanobserver.om/public-utilities-exempt-from-anti-competition-law/>

is restricted, either through monopolies, price fixing agreements between competitors, or bid-rigging for public procurement contracts, prices are likely to increase and quality will also suffer.

In 2018, **Royal Decree 2/2018** brought into force the Competition and Monopolies Prevention Centre Law (the CPMP Law) establishing a dedicated competition regulator in Oman. The CPMP has been given heightened powers allowing it to monitor infringements and enforce the competition law in a similar approach to EU jurisdictions. The creation of monopolistic arrangements, the abuse of a dominant position and entering into anti-competitive agreements are punishable with a prison sentence along with punitive fines.

There are a number of sectors of particular significant for public procurement, such as construction, vehicles and pharmaceutical products. Here, competition law enforcement is particularly important to ensure that bids and tenders are conducted in a transparent manner without collusion or price fixing in any form by private market participants. This dovetails with the Sultanate's recent focus on stamping out bribery and corruption, particularly in the infrastructure and construction sector. There are a number of standard contractual practices in the automobile sector which could also become open to challenge, such as exclusive arrangements and territorial protection.

To encourage foreign investors, **Royal Decree 50/2019 Foreign Capital Investment Law** replaced the earlier Royal Decree 102/1994 Foreign Capital Investment Law. The investment law is designed to attract foreign investment and includes greater incentives for foreign investors. For example, Article 5 of the Foreign Capital Investment Law defines that the investment services centre shall register foreign investors and facilitate and simplify the procedures of extracting all approvals, permits, and licenses necessary for the investment project. Also, the law obliges the investment services centre to extract all approvals in a specific period of time defined by the ministry's decision without any delay. Also, Article 17 gives foreign investment cases priority in the court. Additionally, the **Royal Decree 26/2018 established the Oman Commercial Arbitration Centre**. This Royal Decree has significant changes and motivations for foreign investors because arbitration settlement is the preferred way for the foreign investor more than going to court.

Implementing Bodies

The Implementation Support and Follow-up Unit (ISFU) is an independent entity that reports to the Minister of Diwan of Royal Court. The ISFU's primary role is to provide support to governmental entities and assist them to better implement their plans and programmes based on a clear governance structure and key performance indicators. Further, the ISFU is responsible for monitoring and following up on the implementation of specific national projects; among them is the Tanfeedh programme and Sharakah.

The second is Tanfeedh (Implementation) is a government initiative that aims mainly at linking the strategies of the vital sectors of manufacturing, tourism, transport and logistics, mining, and fisheries to each other in order to diversify the national income resources and fulfil the objectives of the Ninth Five Year Development Plan 2016–2020. It also works towards sustainable participation between the public and private sectors. Tanfeedh identifies the challenges and opportunities of the government projects and community by outlining an inclusive roadmap with the participation of the public to ensure better solutions and fulfilment of KPIs of the government.

The main objectives of Tanfeedh are as follows:

- Accelerate the pace of executing economic diversification plans
- Assist the Government to utilise the best economic and social planning practices; allocate budget to projects for good economic returns and added values.
- Achieve the goals, programs, and policies for economic diversification as identified in the ninth five-year development plan
- Provide a clear and sound plan to increase foreign and domestic investment in the Sultanate
- Enable the Sultanate to upgrade its competitiveness in the various economic and social indicators
- Support organisations to implement projects and plans based on best practices
- Enhance execution efficiency and strengthen cooperation and participation between stakeholders

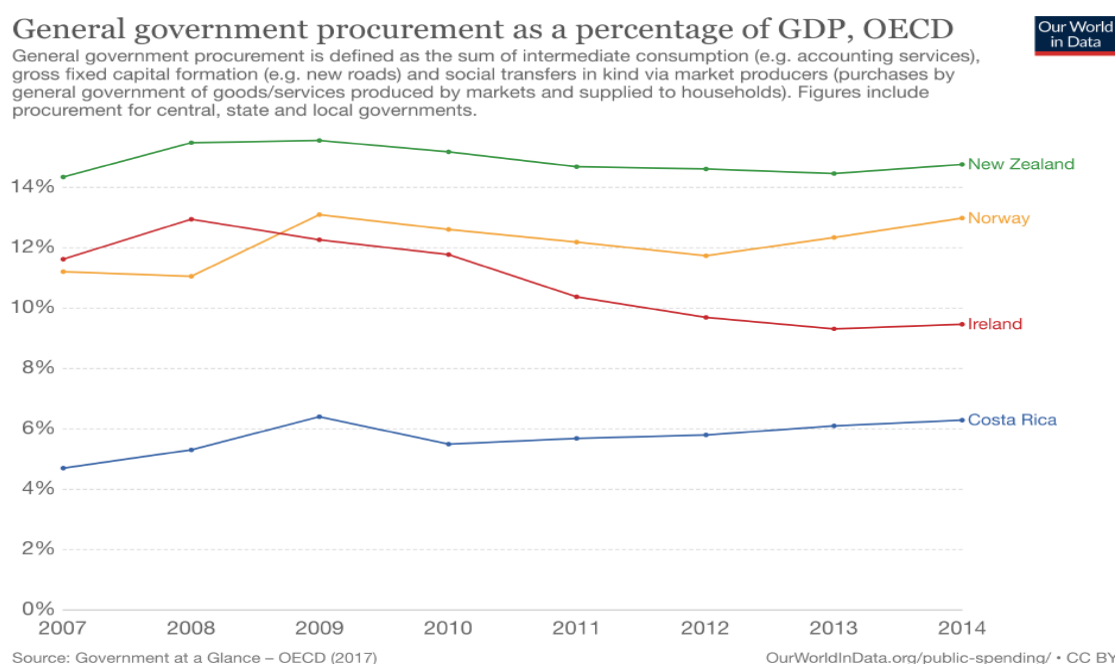
- Provide clear KPIs and objectives, complemented by an accurate mechanism for monitoring execution
- Specify no less than 80% of non-government capital investment to finance the program's initiatives
- Increase GDP⁵⁵

⁵⁵ Supreme Council for Planning, The National Program for Bracing the Economic Diversity (TANFEEDH), available from < <https://www.scp.gov.om/en/Page.aspx?I=37> > accessed on 22/10/2019

2.3.2 The Role of Public Procurement

Public procurement comprises many different forms of purchases, such as tendering and contracting in order to build large infrastructural projects as well as purchases of routine office supplies. Public procurement includes: gross fixed capital formation, such as building new roads, as well as ‘contracting-out’, which often relies on short-term contracts.⁵⁶ As a result, public procurement constitutes a large part of total government expenditure, generating significant economic activity. Figure 4 presents the data available for the comparator countries. It indicates the wide range in spending government spending from over 14% in New Zealand to around 6% in Costa Rica.

Figure 4 General Public Procurement as a percentage of GDP in Comparator Countries



It was not possible to obtain either aggregated or disaggregated data on the volumes and values of public procurement expenditure in Oman during the field interviews. However, World Bank data indicates that the share of public procurement as a percentage of GDP is relatively low in Oman at 6% of GDP,⁵⁷ as compared to the estimated global average of between 10 and 15%.⁵⁸ This means that the Omani government is not as large a player in the economy as some governments. Omani government actions can help to diversify the economy through the purchasing of goods and services, but this would be just one small element of a broader well-coordinated industrial strategy.

Fortunately, public procurement is only one of several policy measures that can be employed to achieve policy objectives; in many cases, a complementary combination of these measures will be necessary to produce the desired outcome. Figure 5 compares the use of public procurement to drive horizontal policy objectives, with other policy instruments available to governments. It indicates that they have different implications in terms of resources, firm behaviour, risks and timeframes.

⁵⁶ Outsourcing includes both intermediate goods used by governments, including the procurement of information technology services, or the outsourcing of final goods and services financed by governments, such as social transfers in kind via market producers paid for by governments.

⁵⁷ <https://blogs.worldbank.org/governance/public-procurement-rich-country-s-policy>

⁵⁸ https://www.wto.org/english/tratop_e/gproc_e/gproc_e.htm

Figure 5 Overview of policy instruments available to governments⁵⁹

	Public Procurement	Regulation	Research Institutions and Universities	Public R&D Subsidies
<i>Selection by</i>	<i>State</i>	<i>None</i>	<i>Firm</i>	<i>State</i>
Primary Government Objective	Satisfaction of public demand and pursuit of political goals by stimulating demand	Influence the behaviour of private actors	Generation and provision of scientific and technological knowledge	Stimulation of R&D activities of firms
Input for Firms	Money	None	Knowledge	Money
Primary Participation incentive for firms	Sales	Mandatory	Access to knowledge	Cost/risk sharing
Effect on firm success	Market risk reduction	Market risk reduction	Technological opportunity	Cost reduction
Time horizon	Direct, short term	Direct, short-term	Continuously, long-term	Medium-term
Inherent Risk	Dependence on public demand	Un-targeted	Knowledge may not spread widely	Crowding out of private R&D investments

Most governments use public procurement policies to promote not only redistribution among different sections of the population, but also industrial strategy, innovation technologies, or small business participation in an economy. By targeting contracts towards particular sectors or groups in society, the government could push forward policies to promote industrial strategies, create employment, or ensure sustainable development. Public procurements prescribe the use of certain materials, technologies or compliance to certain standards, which also enables the government to promote certain types of companies or technologies. Figure 6 indicates that by 2014 most OECD governments were employing public procurement processes to pursue secondary policy objectives, either through strategic policies developed at the central level, or policies internal to procuring entities. Promoting innovation through procurement was less popular but still pursued by the majority (22) of OECD governments in 2014, although less (19) by 2016.

Various measures exist to support strategic public procurement, including legal instruments and more comprehensive government programmes with specific legislative provisions and policies stipulate offsets or preferences through set-aside and bid preferences, and preferential treatments including waiving fees and quotas for preferred firms. The policy challenge is that there is not always compatibility among the various objectives that public procurement policy can potentially serve. So, ultimately, a degree of policy trade-off seems inevitable. Value for money, for example, is unlikely to be obtained at the same time as the redistribution of wealth through preferential procurement policies. Requiring the best price for the best quality available could mean choosing a large foreign supplier over a small local firm or disadvantaged community. Equally, the experience and expertise required to identify the best value available in, for instance, a complex communications technology market, will necessarily detract from short-term efficiency because the tendering process will require additional time and resources. It may involve long-term on-the-job training in processes as diverse as market research, tender design and contract negotiation.

⁵⁹ Birgit Aschoff & Wolfgang Sofka, *Innovation on demand—Can public procurement drive market success of innovations?*, Research Policy 38, p. 1238 (2009).

In effect: the use of public procurement to further Oman's manufacturing strategy involves various trade-offs. A successful strategy carefully balances the need for efficiency, competition and value for money in public procurement, with the pursuit of the horizontal policy objectives of promoting new domestic industries, small and medium sized businesses and innovation.

Figure 6 Development of Public Procurement Strategies/ Policies to Support Secondary Policy Objectives

	Green public procurement		SMEs		Innovative goods and services	
	2016	2014	2016	2014	2016	2014
Australia	■	●	●	●	●	●
Austria	◆	●	◆	◆	◆	●
Belgium	◆	◆	●	●	●	●
Canada	◆	◆	●	●	◆	●
Chile	◆	◆	◆	◆	○	●
Czech Republic
Denmark	●	●	●	●	●	●
Estonia	●	○	●	○	●	○
Finland	◆	●	◆	◆	◆	◆
France	..	◆	..	◆	..	◆
Germany	●	●	●	●	●	●
Greece	◆	◆	◆	●	○	○
Hungary	●	◆	●	●	●	●
Iceland	●	●	○	○	○	○
Ireland	●	●	●	●	●	●
Israel	●	..	●	..	○	..
Italy	●	◆	◆	◆	◆	◆
Japan	●	●	●	●	○	●
Korea	●	●	●	●	●	●
Latvia	●	..	●	..	◆	..
Luxembourg	..	◆	..	◆	..	◆
Mexico	●	●	●	●	●	●
Netherlands	◆	◆	◆	◆	◆	◆
New Zealand	◆	◆	◆	◆	◆	◆
Norway	◆	■	◆	◆	◆	◆
Poland	◆	●	●	●	●	●
Portugal	●	●	●	◆	◆	◆
Slovak Republic	◆	○	●	○	○	○
Slovenia	●	◆	●	●	●	●
Spain	●	◆	●	◆	●	◆
Sweden	●	◆	●	●	●	●
Switzerland	..	◆	..	◆	..	◆
Turkey	●	●	●	●	●	●
United Kingdom	●	●	●	●	●	●
United States	..	●	..	●	..	◆
OECD Total						
● Strategies/policies developed at the central level	25	26	24	24	19	22
◆ Internal strategies/policies developed by some procuring entities	11	14	8	12	9	11
■ Rescinded	1	1	0	0	0	0
○ Never developed	0	2	1	3	6	4
.. No information available	6	3	6	3	6	3
Colombia	●	◆	●	●	●	●
Costa Rica	●	●	●	●	○	○
India	○	..	●	..	◆	..
Lithuania	●	..	●	..	●	..
Russia	..	○	..	●	..	○

Source: OECD (2016, 2014), Survey on Public Procurement, OECD, Paris.

StatLink  <http://dx.doi.org/10.1787/888933535240>

Procurement Instruments to promote horizontal policy objectives

There are various instruments for promoting the participation of a target industry/sector in public procurements policies that are of relevance here.

1. Using the tender specifications to promote the attainment of the policy target, for example renewable energy; recyclability and recyclates
2. The use of performance requirements to attain the policy target, for example employment of local population
3. Offsets, for example, required use of local goods, services or resources. Providing offsets of specific procurements for target groups. For example, formal quotas to ensure small businesses get a share of work in the federal market.
4. Offering price preferences in procurement evaluations, for example, adding a percentage onto the price of non-target business so as to provide the target group competing in the procurement a greater chance of being successful in winning a contract award.⁶⁰
5. Joint Bids, for example permitting businesses to team up and submit a joint bid, submitting bids for one or more lots; companies submitting bids for multiple lots.
6. Lot splitting, for example, breaking down large contracts into small bids to facilitate the participation of smaller companies.
7. Pooled procurement, for example, bulk purchasing among different governments, or government departments to leverage market power to lower prices or target specific companies.
8. Facilitating ability for target businesses to bid, for example increased transparency, improved economic and administrative methods, capacity building.⁶¹

The use of these instruments depends not only upon ascertaining their effectiveness but also their legality under international trade and public procurement rules. Chapter 3 indicates that generally Oman is not restricted in its regional trade agreements (RTAs) to use public procurement to promote SMEs, innovation and diversification of its manufacturing industry. This is not only because of significant carve outs and exemptions but because the agreements do not cover procurement under the specified value thresholds. Nevertheless, as a Member of the WTO other GATT/WTO rules on non-discrimination, subsidies and trade related investment measures are applicable to Oman's trade rules and regulations.

Not least, public procurement measures are mediated by their implementation. Most interventions are conditioned by the way they are conducted, and particularly by the competences and skills of procurers. That is, the outcome of any individual procurement will be influenced as much by the capacity and capability

⁶⁰For instance, in April 2012, the Cabinet of the Government of India approved the Public Procurement Bill, which recognizes SME preference schemes, among others, that set an annual goal of procuring a minimum of 20% of goods and services from micro entities and SMEs in India. See SMEs, Public Procurement and Inclusive Growth. Asian Development Bank. <http://www.adb.org/sites/default/files/publication/30070/sme-development.pdf>

⁶¹ See for example: SMEs' access to public procurement markets and aggregation of demand in the EU. 2015. PwC, ICF GHK and Ecorys; The Access of SMEs to Public Procurement Contracts (2004) prepared by EIM Business and Policy Research and KMU Forschung Austria for DG Enterprise and Industry. <http://ec.europa.eu/enterprise/entrepreneurship/craft/craft-studies/craft-publicprocurement.htm>;

of those who are party to the process, as by the nature of the contract to be delivered.⁶² Using public procurement policy to fulfil strategic industrial policy goals requires a procurement system that has sufficient capacity to implement complex requirements while ensuring sufficient competition and value for money.

An effective public procurement system and its legislative basis, along with the consistent implementation of regulations, are in themselves are strong barriers to corruption, organized crime and inappropriate spending of the budget. This demands high standards in both the quality of public procurement procedures and professionalism of implementing entities. A key recommendation for any public procurement system is to establish a procurement cadre in the civil service and ensure professionalism in the procurement function. Professional staff require precisely defined remuneration and career promotion systems to attract high quality applicants, complemented by compulsory permanent professional development.

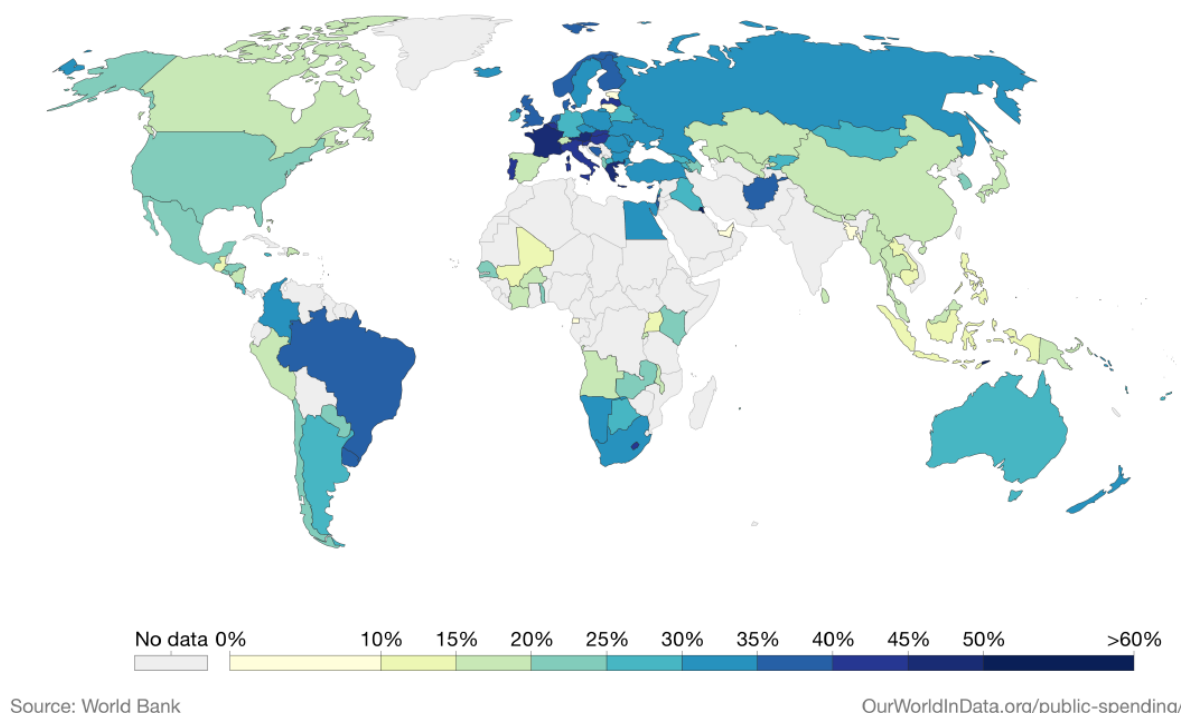
As preferential procurement policies involve significant public funds, their costs and performance need to be accounted for by an offset audit team. Yet one salient issue arising from the research and the field interviews undertaken for this report is that there is a dearth of available information and data on the costs and benefits of using government procurement to promote specific industrial strategies. This is a non-trivial issue, for it is not possible to draw firm conclusions about the impact of particular interventions through procurement contracts, if the data on these procurement do not exist or are not made available. Indeed, Figure 7 indicates that the lack of most basic data available to the World Bank on public expenditure for much of the MENA region.

Another key recommendation therefore is that the Oman Tender Board comprehensively collect and evaluate data relating the public procurement tendering, the impact of preferences and local content requirements, contract performance, life-cycle costs and value for money. This could be with a view to establishing an open data system. See Chapter 3.

Figure 7 Central Government Expenditure as a share of GDP, 2017

⁶² The UK Government HM Treasury Review on Competitive Dialogue (2010).

Total central government expenditures (payments for operating activities of the government in providing goods and services), as share of GDP. ■



Chapter 3. Public Procurement Policies for Promoting Industrialisation in Oman

3.1 Public tendering regulations in Oman

This chapter evaluates the tendering regime in Oman under the current 2008 Tender Law⁶³ and examines existing and potential procurement policies for promoting industrialization in Oman in line with its policies on Omanisation and promotion of SMEs. However, the executing regulations for the 2008 Tender Law were not available in English. Therefore, the scope of this chapter primarily focuses on public procurement by governmental bodies covered by the Omani Tender Law,⁶⁴ which are not excluded from the provisions of the Tender Law either expressly under Article 2 of the law such as public, private partnerships (PPPs) and security and defense organisations or through independent regulation as permitted under Article 2⁶⁵.

In carrying out the research for this paper, interviews were undertaken with the organisations set out in the UNIDO mission report. The recommendations arising from this chapter have been developed from information acquired from these meetings and other independent research. Departments and areas excluded from the scope of this report, may need further examination. Recommendations contained in this report, accord with the original instructions under the brief.

Overall, the current Omani Tender Law (OM-TL), in force since 2008, provides a reasonably comprehensive regime for the tendering of government contracts for ‘administrative offices, public authorities and organizations and companies that are independent bodies corporate owned fully by the

⁶³ Issued by Royal Decree no. 36/2008

⁶⁴ Issued by Royal Decree no. 36/2008

⁶⁵ The current regulations are not, at present available in English so we have been unable to provide a comprehensive list of excluded departments and/or ministries.

government'⁶⁶ in Oman. The Law sets out rules for the tendering of contracts relating to the procurement of supplies, execution of works, transportation, provision of consultancy services and studies, technical works and purchase and leasing of real estate. Broad exceptions to the application of the public tender rules enable contracts to be procured through: 'Limited Tender, Engagement, Direct Assignment and Competition'⁶⁷

In general, there appeared to be a high level of professionalism and competence exhibited by the government managers interviewed for the project, who uniformly appeared to be dedicated to promoting the accurate application of the tender law and regulations applying to their area. It was noted that the procurement organizational frameworks are still evolving and continue to be developed.

However, field interviews revealed that there is a significant degree of diversity in approach to government procurement across the Ministries. In some instances, there may be good reasons for the variations in working practice, however, in the majority of cases, a unified and coherent operational framework would be likely to be more effective in a number of ways.

A notable omission, apparent from interview discussions, was an independent body for the audit and scrutiny of the procurement *and* contract management process. It was reported that there is a department covering security and auditing combined. However, it appeared that existing arrangements are possibly not comprehensive enough to meet the stated objectives of the Tender Law. An additional area of concern was the bottlenecks in the administration of the tender evaluations, through what appeared to be a duplication of responsibilities. This could be the subject of further examination to reduce delays in award time and promote efficiency.

The law sets out the remit of the Omani "Tender Board" which was established in 1972⁶⁸ to review projects and proposals from civil service ministries and government agencies. The members of the Tender Board are appointed by the Government, supported by a Government appointed secretariat. Significantly, the law applies to all units of the "administrative apparatus of the state", including those that have independent legal personality; public organisations and establishments, including government regulatory bodies established under SD 116/91 with independent legal status; and companies which are wholly owned by the Government. The law covers the purchase and lease of real estate. This is potentially wide enough to cover the procurement of usufruct rights in land.⁶⁹ While unavailable to this report, the regulations issued under the previous Law: Royal Decree 86/84 remain in force until they are replaced save for where they are inconsistent with this current law.

3.1.1 Exclusions from the Tender Board

Certain types of contracts do not go through the Tender Board. These are carried out directly by the concerned ministries. From 2008-2013, public companies and government entities had to follow the Tender Board law. Certain exceptions were created in a Royal Decree of 2013, which meant that certain organisations did not have to submit tenders to the Tender Board, but these organisations are still subject to the principles set out in the Tender Law.

The organisations exempted include, but are not limited to:

- The Ministry of Defense
- The Royal Oman Police
- Public Authority for Water and Electricity

⁶⁶ Ibid. Article 2, with the exception of security and defence offices together with any other government organisation excluded by law.

⁶⁷ See Article 3 footnote 1.

⁶⁸ <https://etendering.tenderboard.gov.om/product/DefineFAQ?callValue=pubDashLinkContent>

⁶⁹ A usufruct is a legal right accorded to a person or party that confers the temporary right to use and derive income or benefit from someone else's property.

- Asyad
- Petroleum Development Oman LLC and Oman LNG LLC

Additionally, Government companies (<100% state-owned) follow their own internal rules. There is no monitoring mechanism in place for those that have to follow the Tender Board law, but do not have to issue tenders through the Tender Board.

Recommendation 1

Those government entities following international rules require a comprehensive harmonised law and transparent monitoring mechanism. This should be the subject of further investigation.

3.1.2 The Public Tendering Regulations (OM-TL)⁷⁰

This section of the report examines the current Omani Tender Law and associated regulations. It details the OM-TL provisions and where possible improvements could be made in line with current thinking on best practice in public procurement. The OM-TL⁷¹ provides that: *'The regulations shall govern the necessary rules and procedure for the implementation of the provisions of this law'*. As mentioned above, there has been no access to these regulations for the preparation of this report which has unfortunately restricted the scope for recommendations.

Article three⁷² of the OM-TL provides that it applies to: *'Contracts for supplies, execution of works, transportation, provision of consultancy services and studies, technical works and purchase and leasing of real estate shall be granted through public tenders.'* Article three also states that contracting may be through: Limited Tender, Engagement, Direct Assignment and Competition⁷³.

Recommendation 2

From both an international and national perspective, what is excluded from the usual tendering procedures, under the OM-TL need to be set out explicitly rather than implicitly. This could be listed in a schedule to the Law. The lack of clarity on the scope of application of the law causes some confusion relating to applicable provisions and provides room for circumnavigated.

Article four provides that all types of tender under the OM-TL shall be: *'governed by the principles of openness, equality of opportunity, equality and freedom of competition'*. Transparency is a core requirement of high-quality public procurement. An open transparent tender process improves competition, increases efficiency and reduces the possibility of unfairness or corruption. There are clearly moves in this direction through for example, the ESNEAD, e-tendering website.

Recommendation 3

*Ensure ESNEAD website and software are upgraded to meet the requirements of multiple tendering uploads
Open data?*

Article five states: *'While applying the provisions of this Law, identical supplies, works or services may not be split'*. This provision is to prevent avoidance of administrative requirements relating to the contract thresholds. For example, a contract in excess of 3million OMR must be through the Tender Board and splitting

⁷⁰ Royal Decree no. 36/2008, Issuing the Tender Law, Issued on: 16th Rabee' Al Awwal 1429 A.H., Corresponding to: 24th March 2008, Qaboos Bin Said, Sultan of Oman ('OM-TL')

⁷¹ Article 7

⁷² Part I – Definitions and General Provisions

⁷³ When these categories apply is set out in Part IV – VII of OM-TL.

contracts would enable tendering through a lower tier of the tendering framework. That said, the prohibition of splitting may have unintended consequences relating to SMEs. SMEs are, in most cases, by their very nature set up to undertake lower value contracts and so it may be desirable to introduce 'lot based' tenders where appropriate to encourage a broader band of bidders. Such a system has been used under the EU procurement regime within for example, Norway.

Recommendation 4

Explore feasibility of lot splitting and joint-bidding through pilot projects and guidelines

Article eight⁷⁴ specifies the functions of the Tender Board from publicizing tenders to reviewing contract conditions and specifications and analysis of bids. **Article nine** grants the Tender Board power to remove potential bidders from their 'approved list' on suppliers, contractors or consultants where they have submitted inaccurate data or information; used fraud to secure a contract, or 'if it fails to satisfy a condition or meet a basic liability under a previous contract with any office governed by the provisions of this law'.

Recommendation 5

An effective and independent appeals process should be in place to adhere with the principles of natural justice enabling the reversal of an unfair decision if required. This could be based on the WTO GPA minimum standards approach.

Article eleven provides that tenders are treated as confidential and not to be disclosed without the permission of its chairman. It is frequently in the interests of businesses to keep the content of tender documentation confidential but this needs to be balanced against basic principles of accountability.

Recommendation 6

For the purposes of clarity there could be an amendment to the OM-TL setting out exceptions to this provision relating to confidentiality to meet the requirements of openness under Article 4 of the Law.

Article fifteen provides that where a tender value does not exceed:

- RO 250,000 (approx. 590,000 Euro) internal committees may perform the functions of the Board (details in Article eight),
- RO 50,000 (approx. 118,000 Euro) Board functions can be performed by sub-committees. The sub-committee decision is final if tender value does not exceed RO 10,000. If over 10,000 recommendations of sub-committee send to the head of relevant department for approval.

Article eighteen contains provisions relating to the advertisement of tenders. There is discretion to override rules if the Board believe that it is in the 'public interest' to do so.

Recommendation 7

In the interests of legal certainty public interest overrides should be carefully and transparently, prescribed and applied.

Article nineteen provides that 40 days-notice is required for the submission of bids from the date of publication of the advert. This may be shortened to a minimum of 15 days if required. The 40 day timeframe is in line with current WTO GPA minimum standards requirements.

Article twenty-one refers to the Sultanate's standard general conditions of contract. It appeared that the majority of construction and engineering contracts in Oman used one of the FIDIC standard form contracts amended through the use of special conditions as required.

⁷⁴ Part II OM-TL

Article twenty-eight deals with unusually low bids. This Article provides the right to investigate if bids are unusually low but makes no reference to bid disqualification or other remedies. There has been no data available relating to the frequency of abnormally low bids and consequent disqualification.

Recommendation 8

A challenge mechanism needs to be in place to ensure that any bidder disqualified for an unusually low bid is first provided with a written explanation regarding why they have been disqualified and possibly consider a right to legal challenge where the disqualification is considered unfair. These provisions may already be in place in the regulations.

Article twenty-nine provides that bidders are to receive a decision on the award of tender within the period where the bid is valid (save for where an extension is arranged under this Article).

Recommendation 9

It may be beneficial to the government to extend the period of validity of a bid and prescribe a fixed time for notification (for example within 90 days, allowing for an extension.

Article thirty – the intention of this Article is not entirely clear. It reads:

If the tender invitation includes a request for the submission of credit facilities (finance), the bids accompanied by such facilities shall be taken into consideration while deciding on the priority of the tenders. The Board may cancel the tender if the bids are not accompanied by the necessary credit facilities for financing.'

Recommendation 10

Incorporation of the meaning of 'credit facilities' would help to clarify what is meant by this Article. In addition, some explanation on how such 'credit facilities' are taken into consideration would help to enable bidders to understand how this affects prioritisation of the bids. Clarity is important as the Board have the discretion to cancel a bid not meeting their requirements.

Article thirty-one provides that bids are selected on the basis of the criteria and grounds set out in the tender documentation. There are no formal bid challenge provisions under the current provisions.

Recommendation 11

The Sultanate may wish to consider the introduction of a 'standstill' period to allow for any complaints about the bidding process to be lodged with the appropriate legal body. Obviously introduction of a standstill provision has its drawbacks in the form of delay and possible encouragement of challenges from disgruntled unsuccessful bidders. On the other side, it does provide evidence of a fair and balanced award procedure.

Article thirty-two relates to communication of tender award decision and notice relating to any requirements for guarantees or public liability insurance.

Article thirty-five details circumstances where contracts may be split between two bidders.

Recommendation 12

The Sultanate may wish to consider extending the circumstances in which bids may be split into lots to promote its SMEs and Omanisation policies, through issuing guidelines. This has the advantage of distribution of risk as well as extending the ability of SMEs to bid for suitable contracts. This is further examined below in the lot splitting section.

Article thirty-six gives priority to *national products* of SMEs which includes a priority in prices of up to 10%.

Recommendation 13

This provision is good for encouraging the interest of SMEs relating to contracts for national products. The Sultanate may wish to consider formally extending application of this priority to public procurement of contracts for works and services, subject to carefully designed mechanism to incentivize firms to graduate from the preference scheme. This will mitigate moral hazard and lack of competitiveness..

Article forty-one details when a bid may be excluded. Examples include where exclusion is in the public interest or if the bid does not satisfy the requirements of the conditions and specifications.

Recommendation 14

A challenge mechanism is recommended for this provision, at least enabling excluded bidders the right to reasons for exclusion of the bid.

Article forty-two provides for a 'modification order', subject to the terms of this Article, which may increase or reduce the value, quality or quantity of the items, works or services of a contract by up to 10% of the contract value or for a value not exceeding RO 100,000 (approx. 235,745 Euro) whichever is larger.

Recommendation 15

There is an important recommendation to be made in respect of this provision relating to contract management. Interviews with the Ministries revealed that this provision was not uniformly enforced with some contracts significantly increasing in size. It is important to ensure that the provisions are rigorously maintained to ensure that the system is not subjected to the abuse by contractors submitting an artificially low bid with the intention of recovering some of their profit margin through add on costs during the term of the contract.

To ensure transparency, if not already in place, an annual report to the Tender Board could be submitted, setting out data on contract performance including projected and actual costs. There should also be adequate contract monitoring systems in place to check compliance with the requirements of Article forty-two.

Article forty-three contains a requirement for all bidders to provide security equivalent to 1% of the total value of the bid with their tender. The Board keep the security where bids are withdrawn and only refund the security to unaccepted bidders at the end of the bids validity period (a minimum of 60 days under Article 20).

By requiring the contractor to have an available credit of 1% of the procurement value, the contracting authority are covering the risks of mis- or under-performance and/or to anticipate that the contractor will always be making investments ahead of expected payments for partial completion of the works. In that case, the function of the requirement is not to allow the contracting authority to assess the undertaking's financial standing, but rather to have access to implicit finance for the project and/or to reduce the financial risk of the project for the authority itself. It is unclear whether the funds have to be 'frozen' and available throughout the duration of the contract, or if the contractor can use them to perform the contract.

The EU public procurement directives do not regulate the possibility for contracting authorities to demand financial guarantees from economic operators participating in tender procedures – neither tender/participation guarantees, nor performance/completion guarantees. Such requirements are not regulated as part of the assessment of the economic operator's economic and financial standing for selection purposes – which is designed as an information-based screening process, not as a phase where the contracting authority can secure financial rights for itself –and this is also not related to the conditions for the performance of the contract.

Recommendation 16

One percent of the contract value could be a deterrent to submission of bids by SMEs, taking into consideration that they would lose access to these funds for 90 (or 100?? Days). It is highly recommended that this requirement is removed for SMEs subject to a certain cap on the contract value. For example, this provision could apply only to contracts exceeding OMR 250, 000. Cashflow is a significant issue for many SMEs and any provisions or schemes reducing delays in payments or cashflow will be good for smaller businesses.

Both the suitability and the proportionality of these security requirements need to be taken into account. It should be assessed whether the contracting authority has made efforts to design the contract in a cashflow neutral way (including initial downpayments, for instance), or if there are any other ways in which the management of risk can be satisfactorily conducted without requiring performance bonds.

Article forty-four provides for a guarantee for 5% of the contract value for ‘adequate execution’ of contract within 10 days of award. Alternatively, evidence of a professional insurance policy is required for ‘companies’ and ‘consultancy offices’.

Article forty-five provides the power to cancel the award if a guarantee is not provided within the specified period. There is no reference to this ability to cancel if professional indemnity policy evidence is not provided. Silence on the latter issue should be addressed with an amendment.

Recommendation 17

As a counterbalance to the potential removal of a one-percent deposit for SMEs. If not already part of the tendering procedure, all potential bidders should provide evidence of their ability to provide a guarantee, for example, in the form of written confirmation from their bank or other types of lending agencies, or of any professional indemnity policies on submission of their bid.

Article forty-seven provides for a limited tender⁷⁵ option where:

‘A contract may be entered into through a limited contract in cases the nature of which requires restricting the participation in the tender to specific suppliers, contractors or consultants within or outside the Sultanate who satisfy the required conditions’.

Recommendation 18

Possibly the reference to ‘limited contract’ should read ‘limited tender’. This would be similar to the EU restrictive tender process which is a common where bidders are invited to tender but will need clarification.

Article forty-eight states that pre-qualification invitations shall be published by a notice in the printed media in or outside the Sultanate. After the pre-qualification process, the suppliers, contractors or consultancy offices whose qualified will receive the invitation to participate in the tender. All rules and procedures in the public tender applicable to the limited tender.

Recommendation 19

It is recommended, if not already the case that careful attention is paid to where the contracts are advertised to promote the inclusion of SMEs where appropriate.

‘Mumarasa’ or ‘Engagement’ is a negotiated procurement. OM-TL permits procurement through negotiation for the requirements listed below and in ‘special cases’:

- A. *‘Articles the manufacture or import of which is monopolised or whose nature or the purpose of whose obtainment entails that they should be purchased from the places of their production or those which are available only with an individual.*

⁷⁵ Part IV, OM-TL

- B. *Articles for which no exact specifications may be made.*
- C. *Technical and consultancy works or services that require specific technical know-how or specific specialisation.*
- D. *Animals, birds and poultry of various kinds.*
- E. *Supplies and contracts of works or transport for which tender procedure may not be followed on account of urgency.*
- F. *Supplies, contracts for works, transport and provision of services for which no tender bids have been submitted or for which bids with unacceptable prices have been submitted, and the need for them does not permit re-tendering procedures.*
- G. *Execution of works or provision of services by concerned entities outside the Sultanate.*
- H. *Purchase and leasing of real estate.'*

Article fifty-one sets out the constitutional requirements for using the engagement process.

Article fifty-two provides that the concerned offices may use the engagement process where contract values do not exceed RO 100,000 (approx. 235,745 Euro) *'without prejudice to the Royal Decree no. 48/76 on the signing of external and internal financial transactions'*.

There was no data available relating to how the engagement Process is applied. It is not clear if this is applicable to long-term contracts. As this is a direct award procedure with no formal competitive tender process as such, a programme of thorough audit and monitoring will be required (if not already in existence), to ensure compliance with Omani anti-corruption law.

Similar to the Engagement process, 'Direct Assignment' allows under **Article fifty-four** for the Board may, in 'special cases', enter into a contract through 'direct assignment to execute works, obtain technical or consultancy services, supply articles or carry out assignments.'

Articles fifty-five and fifty-six set out the conditions to be met before direct assignment may be used. It may be used for contracts *'with government offices, organisations and companies to execute works, obtain technical or consultancy services, supply articles or carry out assignments'*. It must be with the approval of the head of the concerned government unit who wants to 'assign' the contract. Article fifty-five provides that the value of the contract must not exceed RO 10,000 (approx. 23,574 Euro). Article fifty-six states that 'if required' if the value of the contract does not exceed RO 25,000 (approx. 58,936 Euro) assignment may be used provided that the prices are 'consistent with the description of the grounds for such an assignment'.

Recommendation 20

The definition of 'special cases' is very loose. An amendment clarifying when the 'special cases' may apply is highly recommended to avoid potential scenarios for corruption.

Article fifty-seven deals with the 'competition' provisions⁷⁶. *'Competition is a special method for contracting for the purpose of conducting studies or preparing designs, layouts, models or other technical works required for a specific project'*.

Articles fifty-eight to sixty-two set out the terms of using competition. It falls between a pure tendering process and direct award ('direct assignment'). The procuring body invites competition, through a public announcement or a direct invitation, to submit their studies or designs etc. A 'winner' is chosen from the entries. Unlike the direct award, contracts of any value can be procured through a Musabakah if the other

⁷⁶ Part VII – Competition ('Musabakah')

conditions are satisfied. Chapter IV – part III of the OM-TL relating to guarantees does not apply. This can include the use of offsets involving local content requirements.

Article sixteen sets out the registration requirements for local bidders, needed before they can submit a bid for valid tenders. It provides that a public tender may be local or international and is tendered in accordance with the regulations set out therein. International bidders do not need to be registered within the Sultanate to participate in international tenders. Local bidders do need to be registered.

Recommendation 21

Observations made whilst researching the report was that the burden on local bidders (and thus SMEs) is a little onerous. Whilst it is appreciated that the Sultanate have reduced the cost of registration for a limited period to stimulate economic growth a longer term objective may be to eliminate fees for registration for SMEs.

3.2 Experiences in Oman of Public Tendering

Field interviews with the Tender Board and ministries indicated that all government entities, including 100% state-owned companies and municipalities/governorates, have to follow the law and the Tender Law applies, save where it has been specifically excluded.

The basic tender threshold responsibilities are as follows:

- For tenders >3million OMR:
Tenders are prepared and evaluated by the Tender Board.
Initial documentation is usually prepared by the Ministry or organization responsible.
- For tenders <3million OMR:
The Ministry issuing the tender, evaluated the tender through its own internal tender committee.

The field interviews indicated that under the regulations, local companies need to apply to the Tender Board to pre-qualify to bid. All eligible companies are classified and given a grade, according to their issued capital, which determines the minimum and maximum sizes of contracts, the type of tender project that a company is eligible to participate in.

The classifications are as follows:

Classification (Grade)	Minimum capital (OMR)	Tender value (OMR)
Excellent	250,000	650,000 and up
One	100,000	250,000 to 950,000
Two	50,000	50,000 to 350,000
Three	25,000	15,000 to 75,000
Four	15,000	Up to 15,000

Evidence of prequalification is provided through a Registration Certificate which requires renewal either annually or biennially. The following supporting documents are required:-

- (i) a list of all names of the Omani employees approved by the Public Authority for Social Insurance (PASI) and
- (ii) a Clear Transaction Form to be obtained from the same authority,

- (iii) an OM-Commercial Registration Certificate with a list of activities to be obtained from the Ministry of Commerce and Industry (MOCI),
- (iv) Authorised Specimen Signatories of those, who sign on behalf of the company on a form of the MOCI with ID copies/passport copies of authorised signatories,
- (v) a Certificate of Grade from Oman Chamber of Commerce and Industry (OCCI),
- (vi) a list of the names of expatriates, along with passport copies and card numbers and the expiry dates approved by Ministry of Manpower,
- (vii) an Omanisation Ratio Certificate (to be obtained from Ministry of Manpower representative at the Tender Board),
- (viii) a Tax Clearance Certificate from Secretariat General for Taxation, Ministry of Finance.

3.2.2 E-tendering

The Website ESNEAD is becoming an increasingly popular means of issuing tenders, including for businesses which are not necessarily within the remit of the Tender Board. At the moment there are 70 businesses using the website. Since 2019, *all* public tenders have to be published at the website, even though they are not all overseen by the Tender Board.

Recommendation 22

Upgrade website and software to ensure it is fully functional when there is a high volume of tender documentation being uploaded close to deadline dates.

3.2.3 Offsets and domestic Preferences

Pursuant to Article 36 of the Royal Decree No. 36/2008 Issuing the Tender Law, priority in bids shall be given to national products of small and medium industries that meet the conditions and specifications. The priority includes bids with prices within a range of a 10% increase.

Promotion of local products

- 15-20 years ago, Oman Cement successfully lobbied to get preferential treatment to sell to government entities: the Tender Board at the time issues a statement to encourage purchasing from them. Now all government entities buy from Oman Cement. There is a similar story for Oman Cables. Note that both companies already existed; the question is how to form a link between the (often new) priority sectors from the Strategy, and the tender demand. Also note that in both cases, Oman Cement and Cables, they complied already with quality criteria.
- Since 2011, one criteria is local employment creation.

The Sultanate made a decision regarding the commitment of government to source 10% of their public procurement from local/Omani SMEs. This commitment has two elements:

- Each government entity should not allocate less than 10% of their tenders to Omani SMEs.
- Where a substantial contract is awarded to a contractor, at least 10% of their subcontractors have to be Omani SMEs.

Recommendation 23

These appear to be policy guidelines which are not enshrined in law or Royal decree. This should become a formalized and uniform rule to provide greater certainty, monitoring and enforcement.

It is reported that the 10% allocation to Omani businesses is not achieved. Furthermore, there does not appear to be any data published following any state audits relating to local sourcing. It is also reported that checking compliance with the policy, on an ex-post basis, is very limited.

The interview with Riyada noted that out of the 41,000 SMEs registered with them, only 140 are registered with the Tender Board. The Tender Board acknowledged the problem, but indicated they are not aware of what could cause this issue; they have tried to help SMEs, for example by lowering the registration fee from OMR50 to OMR25.

In addition, there are certain conditions for SME support to bid for a tender:

- Businesses must be owned by an Omani
- An Omani must fully manage the company and not have employment elsewhere
- Businesses cannot be a subsidiary company.

The law specifies that each tender has to be awarded according to the (transparent) evaluation criteria of a certain tender (e.g. company turnover, length of existence).

Recommendation 24

The law itself does not have certain evaluation criteria. While this gives some flexibility to promote local sourcing via evaluation criteria, it should provide guidelines to support and limit the discretion of procurement officers.

Sometimes an SME that was “disqualified”/rejected after their tender application, they will write to the Tender Board. In case this was justified, the Tender Board will connect and discuss with the respective Ministry that did not award the bid to the specific SME. However, the Tender Board has no power to cancel a certain tender.

3.2.5 Interviews with Ministries and Public Procurement Bodies

This section sets out a summary of findings at the specific public procurement bodies interviewed as part of this report.

The Tender Board

The Tender Board was established in 1972 to handle all of government procurement requirements. The Tender Board currently manages only high value tenders (over 3 million OMR) and not in all sectors. It is reported that there are around 52 entities which are required to administer tenders through the Tender Board (if the tender exceeds 3 million OMR). There is uncertainty about the *total value* of tenders overseen by the Tender Board, as no data was provided.

The Tender Law (Decree No. 38/2008) does not apply to projects under the PPP Law or the Privatization Law, or consultancy contracts associated with either law. Ministries retain the responsibility for managing PPP projects.

The Tender Board has 150 Employees. In 2017 the government adopted a decentralization strategy, allowing different ministries and key institutions and crown corporations to handle their own tender process. The idea behind the decentralization was to speed the decision-making process and create efficiencies.

The Tender Board stated that its contracts first need to be authorised by MOLA, the Ministry of Legal Affairs. A specific appeals process has been created under the law for disputes relating to the tender process, project award or implementation. It was not clear as there was no data or reports available how effective this dispute resolution system is.

In 2013, the Tender Board was required to oversee tenders that exceeded 1 million OMR. At the time, this equated to around 400 tenders per annum. Since increasing the criteria to 3 million OMR, the number of tenders overseen by the Tender Board has decreased to 19 (2018) and 28 (2019, total value of 500mn OMR). It was reported that the Tender Board assessed between 20 and 25 tenders in 2019 valued at 600 billion OMR. However, in 2018 it assessed 400+ tenders. That is, pre 2017 all ministries and SOEs had

one Tender Board law: under 1 million in-house. After 2017, procurement was more taken in-house – resulting in 27 laws because some government entities have their own regulation.

Recommendation 25

A single tender regulation for all government procurement would provide more legal certainty, transparency and allow for more efficient monitoring of the implementation of strategic public procurement policies.

The Tender Board supply documents free of charge to Grade 4 SMEs, for tenders worth less 10,000 OMR. For tenders with a value exceeding 10,000 OMR, there is a charge of between 25 to 1,500 OMR on a sliding scale. Businesses are required to registration MOCI for local procurement. International bids are required to register later after award of contract.

The Tender Board formally operate a policy of payment of invoices within 30 days and have set up a system to pay SME subcontractors direct, circumventing the main contractor. However, this has been contested by the widespread complaints about late payment from the business sector. The Tender Board are bound by the legal and regulatory preference policies and operate a 10% price preference for SMEs in their tender evaluation. The regulatory requirement of 10% local content requirements forms part of their conditions of contract. Since July 2019 e-tendering has become compulsory which theoretically should open up the bidding process to more SMEs making bidding more accessible. This is contingent on good internet access.

Penalties – Clause 9. Businesses must be 100% Omani owned, registered in Riyada. SMEs should not be linked to big company. Monitoring includes site visits are required to check SMEs are not fronting.

The Tender Board reported that the Ministries have a 3-month reporting requirement, but that they are not consistently receiving this data. The Tender Board are working towards a transparent system, in 2020 there will be a policy of open data and information will be freely available online. Tender Board state that their relationship with National Auditing Body is good and when given, their recommendations have concerned procedure and have been accepted.

Recommendation 26

It is recommended that the Ministry reporting requirements are enforced.

Oman Ministry of Legal Affairs (MOLA)

The Ministry of Legal Affairs was established in pursuance of Royal Decree No 2/94. Royal Decree No 14/94 sets out MOLA's competences including:

- reviewing contracts that impose an obligation on the government exceeding half a million OR
- safeguarding the interests of the government in disputes relating to government contracts,
- developing laws and regulations in coordination with other ministries and governmental bodies,
- preparing and reviewing draft royal decrees, laws, regulations, and ministerial decisions, preparing
- reviewing draft treaties and international conventions that the government intends to sign or join,
- rendering legal opinions and issuing official fatwas and interpretations of royal decrees, laws, and ministerial decisions
- issuing the Official Gazette, and representing the government in international and regional organizations and conferences relating to legal affairs.

The discussion covered the following points:

- MOLA evaluates all Tenders that are valued at over 500,000 OR.
 - The process can take up to 3 months.
- MOLA is not responsible for translating the Executive Regulation for the 2008 Tender Law
- Complaints concerning the tendering process are dealt with in the Administrative Court
- Complaints concerned the tender contract are dealt with in the Civil Court
- MOLA checks whether the procuring body has a mandate to procure and this is not always clear.
- Most construction contracts follow the FIDIC standard form contract format with special conditions.
- The Ministry of Finance have their own Standard Form Contract.
- Contract dispute resolution is mainly through arbitration following the UNCITRAL rules.
- MOLAs biggest challenge is from variation orders with some high value contracts doubling or even tripling in value through their use.
- There is a separate law for conflicts of interest under Royal Decree 112/2011.
- There is a state audit system auditing all government contracts. The audit office are powerful in terms of ability to investigate and take appropriate sanctions against mis-use of public monies.
- State owned enterprises and the oil and gas sector are not subject to the Omani Tender Law.

Oman Ministry of Agriculture

The Ministry of Agriculture and Fisheries sets the policies, drafts laws and issues regulations related to the management of agricultural, animals, fish and pastoral resources.

The meeting covered the procurement practices of the Ministry of Agriculture highlighting:

- The Ministry conducts its own procurement up to 3 million OMR, anything over 3 million OMR must attain the approval of the Tender Board and MOLA.
- The Ministry has its own Internal Tender Committee to look at any complaints made during the tender process. There are 3 stages in the complaints process.
- The Ministry implements its 10% price preference rule to promote SMEs, and sets 10% of contracts aside for SMEs and requires contractors to give 10% of the value of its contract to SMEs
- However, the ministry does not monitor the implementation of this policy, nor evaluate its success
- The Ministry uses the ESNAD website to publish its tenders – there are problems with uploading documents towards the deadline
- The Ministry charges businesses between 50 and 3000 OR for the tender documents save for contracts worth less than 10,000 OR where tender documents are free for bidders.
- Financial capacity of bidders is checked through the tender evaluation process.

DIAM Authority for Water

The Public Authority for Electricity and Water (Diam) was established in 2007, by the promulgation of Royal decree 92/2007. It was followed by a Royal decree (58/2009) defining the responsibilities and jurisdiction of the PAEW. By Royal Decree 42/2018, "Public Authority for Electricity and Water" was replaced with name "Public Authority for Water".

Diam is the regulator for the water sector in Oman. In addition to this, Diam is also a direct water service provider, responsible for supplying potable water to all homes and businesses in Oman except in Dhofar. This lack of regulatory independence could present a conflict of interests or regulatory capture.

The discussion highlighted:

- As with the Ministry of Agriculture, DIAM conducts its own procurement up to 3 million OMR, anything above 3 million must attain the approval of the Tender Board and MOLA.
- The Ministry has its own Internal Tender Committee to look at any complaints made during the tender process
- The Ministry implements its 10% price preference rule to promote SMEs, and sets 10% of contracts aside for SMEs and requires contractors to give 10% of the value of its contract to SMEs as part of its KPIs.
- However, the Ministry does not monitor the implementation of this policy, nor evaluate its success
- The Ministry uses the ESNAD website to publish its tenders – they have experienced problems with uploading documents towards the deadline
- The Ministry charges businesses for the tender documents
- Clear water services are currently being merged with waste water.
- The Ministry state that their contract variations are well monitored. The standard form FIDIC contracts are used.

SEZAD

The Special Economic Zone in Duqm (SEZAD) was created in 2011. SEZAD stretches over 2,000 sq. km with 60km long beach front. 45% of the area is already in process of development leaving the rest for future expansion. SEZAD has its own tender law for tenders less than 3 million OMR. It has an internal tender committee and tender board to evaluate cost variations and complaints. For contracts above 3 million, SEZAD has to seek the approval of both the Tender Board and MOLA.

SEZAD offered an example of best practice for SME promotion. Its administration of procurement actively promotes SMEs through:

- a) the 10% price preferences for SME bids
- b) the 10% subcontracting to an SME policy
- c) the 10% contracting to an SME

SEZAD use the Riyada definition of SMEs and it maintains a database of SMEs categorized by sector which is then used as an aide for contractors to identify suitable SMEs for subcontracting. Managers, are aware that cash flow can be a problem for SMEs so, SEZAD has developed system of paying SMEs directly to avoid delayed payments through contractors.

Contract terms are effectively enforced by SEZAD with penalties for non-compliance with Omanisation requirements. The penalty can amount to up to 10% of the contract value. SEZAD also ensure that the cap of 10% of a contract value for contract variations is complied with.

Recommendation 27

It is recommended that, unless inappropriate, all Ministries adopt the SEZAD approach to payment of SME invoices. Ministries could be invoiced directly by SMEs and pay within 30 days. Additionally, if not already doing so, it may be effective develop a similar system to assist larger enterprises to identify suitable Omani SMEs for sub-contracting roles.

Riyada

Riyada was established as the Public Authority for Small & Medium Enterprises Development following the Royal Decree No. 36/2013. Riyada's purpose is to develop small and medium enterprises, and instill a culture of entrepreneurship and self-employment among emerging and young people. Riyada employs less than 100 employees, its annual budget is unknown. It undertakes over 1,500 feasibility studies per year. Riyada's services are limited to Omani citizens with the cost of obtaining membership (a Riyada Card) low at 5 OMR.

However, the field interviews indicated that there still exists a lack of awareness of opportunities available through Riyada. In 2020 Riyada is rolling out a training programme for government tendering to assist SMEs with their understanding of requirements for submission of a bid. Riyada provide an incubation programmes for SME in various fields such as IT.

Discussions with Riyada indicated that in 2018, approximately, 42,000 SMEs registered with Riyada out of a potential total of around 100,000.

- Riyada managers felt that SMEs, would much prefer a centralised model of procurement through the Tender Board and unified legal framework rather than the reported 27 laws which currently exist.
- It was reported that there is no single definition of SMEs, for example, the Tender Board definition is different from the private sector definition used in Oman and this should be harmonised through legislative or regulatory intervention.
- The bid bond was also felt to be overly onerous for SMEs and its removal (particularly for small enterprises) could be helpful. Small contracts worth under 10,000 OMR are not currently covered by the Tender Law. No data was supplied as to how these lower value contracts are procured, however, it would benefit SMEs to have a clear legal framework, in line with existing provisions, although with less requirements.
- Riyada think that free documentation for Grade 4 SMEs is important. Some Ministries are providing low value tenders free to SMEs but this is not a consistent policy.
- Riyada also believe that lot splitting & joint bids work very positively for SMEs. At present there are so many layers of subcontracting that profits for smaller enterprises are often low.
- A lack of trust from smaller enterprises appeared to be a significant reason deterring SMEs from bidding. The Sultanate has a policy of transparency, the Tender Law provides a good basic framework for a fair bidding process and e-tendering is being rolled out so this should improve over time provided that a good level of communications with SMEs is developed and the underlying regulations are rigorous in ensuring that there is no creep in corruption.
- Riyada also reported instances of the 'fronting problem'. Large internationals employing Omani micro businesses and SMEs to comply with their contractual and regulatory requirements. Hearsay evidence suggested that many of these Omani businesses are paid but told to stay at home, thus defeating the objective of Omanisation of skilling up the national workforce.

Other issues identified as problematic for the progress of Omani SMEs were:-

- SMEs experience problems in payment delays.
- E-tendering is in its infancy and the website needs improvement.
- Taxation for all companies including SMEs stands at 12% of profits.
- 2 years transition until full compliance with Omanisation: conditions less restrictive

- Monitoring and evaluation
 - ICV companies monitoring and enforcement
 - Other companies – preferred suppliers
- In the oil and gas business gateway, SME registration is low.
- Many areas of business are dominated by large international companies.

Recommendation 28:

Harmonisation and centralization of procurement law and enforcement mechanisms- with a single definition of an SME.

Recommendation 29:

The bid bond for SMEs could be removed.

Recommendation 30:

Extending extending some of the legal provisions to lower value contracts may benefit SMEs.

Contracts not exceeding 10,000 OMR which are not covered by the Tender Law are the natural arena of the SME.

Recommendation 31:

Broaden the application of Lot Splitting and Joint Bids enabling the smaller businesses to grow whilst sharing the risk of awarding contracts to SMEs.

Recommendation 32:

Tackle the 'fronting' problem through better contract management and enforcement penalties. Contractor should supply progress reports on a monthly or quarterly basis of work and training undertaken for the Omani workforce which should form part of the tender documentation as a KPI.

Ministry of Health

The Ministry of Health (MOH) is responsible for ensuring the availability of health care to the people of Oman. The Ministry's main aim is to provide health services: supporting services and supplies, medicine, medical equipment, non-medicines. Authorisation for ministries to procure contracts with a value between 10,000-3 million OMR, as set out in the 2008 OM-TL, applies to the MOH.

The MOH advertise their tenders in national newspapers in both English and Arabic for two consecutive days. Contractors then have 40 days to submit a bid. Tender documents cost a minimum of 25 OMR. There is currently a temporary reduction in Tender board fees lowering fees by 50% for a limited period to encourage more bidding.

One of the main issues identified from the field interview, other than a need for a higher budget to replace old equipment, was the bottlenecks in tendering of the MOH contracts. Some contracts can take one year to award which can have expensive knock on effects in this area. The MOH cited the example of needing to hire equipment whilst waiting for the procurement process to be completed. MOH take around 6 months to tender and evaluate contracts. Contracts in excess of 3 million OMR need to be considered by the Ministry of Finance, MOLA and the Tender Board adding a further 6 months to the whole procedure. It is predominantly only the large wealthy companies who are able to tender for bids under these timeframes.

Recommendation 33:

a) Streamline the Tender Process – currently entails 17 steps and is highly bureaucratic to complete in 90 days
- Contract or Local Purchase Order – more than 100,000 OR must be endorsed by Minister of Finance
- Above 500,000 OR needs to go to MOLA. This threshold should be higher to allow for internal endorsement because Ministry Finance long backlog – 3 months delay + 3 month internally + supplier 6 months. Recommend 1mOR.
There may be a duplication of roles in the Ministry of Health, MOLA and Ministry of Finance which cause some of the bottlenecking problems. It may be worth evaluating the benefits of devolving power individual ministries, enabling them to manage their own budgets which could potentially assist in the reduction of delays. The MOF could increase its advisory role and carry out monitoring and evaluation of effectiveness of the other service supplying Ministries.

Recommendation 34:

There are 35 types of contract with a contract length of 3 years – in some cases this needs extending.
Requested certain services for 5 years e.g. maintenance contract.

MOH Offsets: Buy local and SME policies

The field interviews indicated that the MoH followed a 50% Omanisation policy, beginning with 30% and increasing 10% per year for each contract for 5 year contract. However, it was reported that Circular 2001 is not implemented, and that more enforcement from the Ministry of Labour is required. While there is a penalty for breach of Omanisation, at present this Penalty doesn't force contractor. There is insufficient capacity to supervise and implement penalty clauses.

Recommendation 35:

a) There are a number of contracts which are suitable for SMEs in the healthcare sector such as cleaning, catering and laundry. These types of contract would be ideal for lot splitting and further outsourcing using SME only contracts: e.g. laundry, landscaping, catering cleaning, maintenance

Recommendation 36:

Removing the bid bond for SMEs but would retaining the 5% performance bond from the winning bidder.

Madayn

Madayn - the Public Establishment for Industrial Estates - was established in 1993 in continuity with the establishment of Rusayl Industrial city in 1983. The success story of Rusayl Industrial city encouraged the establishment of Madayn, which now manages and operates seven industrial cities in addition to Knowledge Oasis Muscat (KOM) and Al Mazunah Free Zone.

In Madayn, the procurement process Pre 2017 followed the Tender Board. From 2017 onwards Madayn developed its own manual. But the main difference is that Madayn possesses its own General Tender Committee, with a representative board comprising of five members from Madayn, one from the Muscat municipality and one from OmanTel for assessing tenders below 3mOM. Above the 3mOM threshold, the general tender is reviewed by MOLA. This takes two days.

There is a 30% Omanisation requirement in the tender specifications, 10% Omani material where available, and a 10% SME price preference. The ICV plan checked and with ministry and there are inspections on sites. The field interviews suggested that ICV compliance was difficult due to a skills shortage. It was stated that Omani's skilled labour often shifts to the private sector because the government sector is financially less attractive. There are reports of fronting companies paying SMEs to fulfil their Omanisation requirements but asking the SME to stay at home.

Madayn has its own registration system to submit papers. There is no fee for Tier 3 companies. However, Tier 1 & 2 pay for a GSRS certificate at 100 – 900 OR depending on company size. This fee covers evaluation and certification fees, and discourages time wasters. However, the interview indicated that there are less than 50 registered including supplies and contractors and consultants.

The Bid bond is 1% to indicate commitment, while the payment for tender documents is maximum 3,000 OR min 50 OR. There are pre-qualification requirements only for big projects.

Innovation is undertaken through the privatized innovation center. Most projects infrastructure and generally promote innovative solutions but no specific innovation projects are undertaken.

There is no independent body for bid challenges, are they are addressed within the General Tender Committee. There is no database for monitoring conflicts of interest. The reliance is on self-declaration. The State Audit office undertakes a review 3-4 times per year, issues reports. To date the recommendations have been minimal and limited to procedural issues.

The e-tendering system has weaknesses. It is complex and uploading is slow. There may also be cyber security problems.

Recommendations 37:

a) One stop shop system for all procurement using the same software.

This would allow for following the procurement process on line and provide the basis for an open data system.

Sultan Qaboos University Procurement Department

The Procurement Department is one of the executive Departments that report to the Deputy Vice Chancellor for Administrative & Financial Affairs. The responsibility of the Department is to manage and execute the procurement requests of the University except the Hospital, including management of the tendering and contract processes. The Department also operates as a link between the different university units and the suppliers to follow up status of Purchase Orders and Contracts and resolve issues hindering execution of the same. Procurements include supplies: books and equipment; construction projects: laboratories, research, plants; and services: transportation catering

The university procurement department has an exclusive use tender website. However, it uses hard copies of tender documents and proposals and the e-tendering software is not user friendly. The policy goal is to use ESNAD for everything in the future.

The University primarily contracts under Tender Law Decree 2008

- Any contract above 3m has to go through the Tender Board
- If the contract is above 500,000 OR the contract goes through MOLA and then the Tender Board
- No statistics available but per year, around 3 contracts are above 500,000
- 30 orders per week
- Variation orders – monitored by Local Tender Committee – Vice Chancellor, chair + 9
- Tender Board new evaluation weighting process – 60% is based on technical proposal and 40% is based on the Price.

Recommendation 38

The tender board evaluation process needs a weighting system beyond Pass / failure

The University promotion of SMEs

- Lot splitting – condition university has right to split if feasible/viable
 - Small procurement – scanners / printers

Recommendation 39

Establish an SME data base – which would be useful for regular supplies of material

- *remove the difficulty differentiating between companies*
- *remove the difficulty in monitoring SME preferences for small direct purchases*

Recommendation 40

Create independent monitoring for enforcement

The challenges reported in the field interviews included:

1. Not enough bidders
 - no competition in market – new entrants not attracted as few incumbents with much experience
2. Delays in requests from end users
 - Flow of requests throughout year.
 - Budget cycle.
3. Culture for environmental protection / recycling low

MOCI Director of Organisations – Khalfan Said Al-Rabbi

International Public Procurement Rules

Trade agreements are increasingly incorporating provisions on public procurement including both governance and market access commitments. While Oman has been an observer to the WTO Government Procurement Agreement since 2001, it has not acceded to the agreement. The field interview indicated that this is partly due to the GCC countries wishing to negotiate accession as a bloc. However, it is further complicated by Saudi Arabia's wish to negotiate as an individual signatory party.

Oman is a member of the following trade agreements:

- Gulf Cooperation Council (GCC): 2003 (Jan. 1): Goods: Customs Union: Membership: Bahrain, Kuwait, Oman; Qatar; Saudi Arabia, UAE.
- Pan-Arab Free Trade Area (PAFTA): 1998 (Jan. 1): Goods: FTA: Membership 17 Arab countries.
- US-GCC: 2009
- Singapore-GCC: 2013: includes Public Procurement
- US-Oman: 2009: includes Public Procurement

The Gulf Cooperation Council

The GCC includes a customs union between Saudi Arabia, Kuwait, Bahrain, the UAE, Qatar and Oman, including:

- i. A common external customs tariff (CET).
- ii. Common customs regulations and procedures.

- iii. Single entry point where customs duties are collected.
- iv. Elimination of all tariff and non-tariff barriers, while taking into consideration laws of agricultural and veterinarian quarantine, as well as rules regarding prohibited and restricted goods.
- v. Goods produced in any Member State shall be accorded the same treatment as national products.

The GCC does not cover government procurement although there is a pooled public procurement system for pharmaceuticals. The Gulf Health Council is a regional technical specialised organisation with its membership restricted only to the Cooperation Council States, plus Yemen. Within this organisation sits Gulf Joint Procurement programme. The Gulf Health Council for Joint Procurement seeks to standardise the directory of pharmaceutical devices and medical supplies throughout the Gulf Joint Procurement programme, with the controls in place across the GCC member states.” The GCC healthcare market is projected to grow at a 12.1% compound annual growth rate (CAGR) from an estimated US\$40.3bn in 2015 to US\$71.3bn in 2020, according to Alpen Capital.⁷⁷

Pooled procurement, otherwise known as joint purchasing, is increasingly being regarded globally as an efficient strategy to resolve challenges as high pharmaceuticals and vaccines prices, poor quality and other bottlenecks generally associated with Procurement and Supply Chains of Essential Medicines. The GCC programme centralizes the tender and bid process for its six member countries, who then contract with and pay suppliers on their own. The programme handles only the tendering, bidding, selection, and adjudication part of the procurement process. Member countries agree to purchase at least 60% of the total value of their requirements in each product category (e.g. vaccine and sera) to ensure continued functioning of the programme, while still allowing countries a degree of flexibility in their medical purchases. When producers contract individually with each country, they are obligated to offer the same prices across countries for the entire year as stated in their bids. The objectives of the program are to achieve cost savings through bulk purchasing and ensure the continuous supply of medical products by reducing administrative burdens.

Oman-US FTA

Oman has signed a bilateral trade agreement with the US that incorporates a chapter on public procurement. This trade agreement led to the new 2008 Tender Law in Oman. The agreement opens up public procurement markets for goods, services and construction works to competition from US businesses. The value threshold for opening up the procurement market to 33 central level government entities,⁷⁸ for the procurement of goods and services is \$193,000, while for construction services it is \$8,422,165.

For the five ‘other covered entities’ under List A,⁷⁹ the value threshold for the procurement of goods and services is \$250,000. For Rural Utilities Services included under List B entities, the value threshold is

⁷⁷ <https://www.supplychaindigital.com/company/gulf-joint-procurement-programme-helps-standardise-medicine-supply-gcc#>

⁷⁸ 1. Ministry of Agriculture and Fisheries (*Note 1*) 2. Ministry of Awqaf and Religious Affairs (*Note 2*) 3. Ministry of Commerce and Industry 4. Ministry of Civil Service 5. Ministry of Education (*Note 3*) 6. Ministry of Foreign Affairs 7. Ministry of Higher Education 8. Ministry of Housing, Electricity, And Water 9. Ministry of Information (*Note 4*) 10. Ministry of Heritage and Culture 11. Ministry of Finance 12. Ministry of Health 13. Ministry of Oil and Gas 14. Ministry of National Economy 15. Ministry of Justice 16. Ministry of Legal Affairs 17. Ministry of Manpower 18. Ministry of Regional Municipalities and Environment and Water Resources 19. Ministry of Social Development 20. Ministry of Sports Affairs 21. Ministry of Tourism 22. Ministry of Transport and Communications (*Note 5*) 23. Muscat Governorate 24. Public Authority for Social Insurance 25. Public Authority for Handcraft 26. State Audit Institution 27. Supreme Committee for Town Planning 28. Telecommunications Regulatory Authority 29. Sohar Refinery Company 30. High Committee for National Day 31. Oman Refinery Company 32. Public Establishment for Industrial Estates 33. Oman Oil Company

⁷⁹ Oman Gas Company 2. Oman Housing Bank 3. Oman Development Bank 4. Capital Market Authority / Muscat Securities Market, Sultan Qaboos University

\$593,000. For the procurement of construction services for both List A and List B entities, the value threshold is \$10,366,227. Any “Buy national” requirements on articles, supplies or materials acquired for use in construction services contracts covered by the chapter do not apply to *goods* of either Party.

Oman has reserved significant policy space to implement horizontal policy objectives through its public procurement. The US-Oman procurement provisions contain various limits to market access for US firms. For example, the chapter does not apply to procurements by a government entity of a good or service obtained or acquired from another government entity. Further, the agreement does not cover religious and media and educational services, the Civil Aviation Administration, research and development, telecommunications Services, Information Processing, and Telecommunications Network Management Services, all Utilities, All Transportation, Travel, and Relocation Services: All Arbitration and Conciliation Services, Financial Intermediation Services, except Investment Banking, Insurance Services, and Pension Services, and Investment Banking Services. Significantly, Oman reserves the right to maintain its existing preference programme to promote the development of its small and medium sized enterprises.⁸⁰

GCC-Singapore Free Trade Agreement

The GCC-Singapore FTA includes a comprehensive public procurement chapter, with schedules on market access coverage based on an exhaustive positive list system.⁸¹ Covered procurement is subject to non-discrimination, transparency and due diligence requirements for contracts above specified value thresholds. The chapter also sets out clear provisions to justify and exclusions or exemptions from the application of these rules.

3.3 How Strategically has tendering been used in Oman?

This analysis of the Oman Tender Law 2008 and interviews with procurement officials in the Tender Board, Ministries and other bodies indicated recommendations for public procurement policy to be more strategically deployed:

Omanisation

Oman has enacted several measures to support the strategic use of public procurement policy. These include Omanisation or offset policies with local content requirements, preferences for Oman businesses and the particular promotion of Omani SMEs. Compliance checking mechanisms and prompt payment for Omani SMEs on the SEZAD model need to be rolled out across all ministries and departments responsible for administering public procurements.

While these laws and policies have been well established, the field interviews suggest that their monitoring and implementation has been less effective. A common theme running through the interviews was the lack of monitoring relating to the Omanisation and SME policies. Furthermore, the penalties attached to non-compliance with these requirements were not seen to be an effective deterrent. Other measures seen to promote SMEs are discussed further in Chapter 6. There is no monitoring mechanism in place for those that have to follow the Tender Board law, but do not have to issue tenders through the Tender Board. This should be the subject of further investigation.

The findings from the field interviews suggests that there should be an assessment of requirements prior to submission of a tender with a view to reducing the administrative and financial burdens on Omani SMEs.

⁸⁰ Established under Sultani Decree 1/79, Article 21, and its successor programs

⁸¹ Oman schedules Annex 1.

Article thirty-six gives priority to *national products* of SMEs which *includes* a priority in prices of up to 10%. This provision is good for encouraging the interest of SMEs relating to contracts for national products. The Sultanate may wish to consider extending application of this priority to public procurement of contracts for works and services. The Sultanate may also wish to consider extending the circumstances under Article thirty-five of the OM-TL in which bids may be split into lots to promote its SMEs and Omanisation policies. This has the advantage of distribution of risk as well as extending the ability of SMEs to bid for suitable contracts. This is further examined below in chapter 6. The Sultanate may also wish to consider providing for the possibility for joint bids between SMEs and Local Community Companies to allow for them to tender for larger contracts.

Article forty-three contains a requirement for all bidders to provide security equivalent to 1% of the total value of the bid with their tender. The Board keep the security where bids are withdrawn and only refund the security to unaccepted bidders at the end of the bids validity period (a minimum of 60 days under Article 20). One percent of the contract value could be a deterrent to submission of bids by SMEs, taking into consideration that they would lose access to these funds for 90 (or 100?? Days).

It is recommended that this requirement is removed for SMEs subject to a certain cap on the contract value. For example, this provision could apply only to contracts exceeding OMR 250, 000. Cashflow is a significant issue for many SMEs and any provisions or schemes reducing delays in payments or cashflow will be good for smaller businesses. Due diligence is an important part of contract evaluation and removal of a deposit requirement *before* award in no way obviates the need to ensure that bidders have the capability, capacity, and experience to effectively discharge any contractual obligations.

As a counterbalance to the potential removal of a one-percent deposit for SMEs. If not already part of the tendering procedure, all potential bidders should provide evidence of their ability to provide a guarantee (for example, in the form of written confirmation from their bank) or of any professional indemnity policies on submission of their bid.

E-procurement

Technology and the use of e-procurement offers a variety of advantages in the procurement process. The Oman government could consider further upgrading of the e-procurement system to establish a one-stop-shop for tendering and following a tender, creating a path to setting up an open-data system and the use of block chain.

The benefits of technology includes:-

- (i) Effective use of time – reducing the time and costs associated with the process. For example, sending out tender bundles to potential bidders electronically.
- (ii) Collaboration – with suppliers to improve performance and cost.
- (iii) Accurate and instant flow of information – instant data retrieval promotes efficiency in many things such as analysis of need and assessment of tenders.
- (iv) Improved Contract Management – quick and accurate information for managing procurements at all stages.
- (v) Transparency – greater access can be provided through technology which facilitates the increase in transparency as well as promoting increased competition.
- (vi) Audit – more accountability is provided through electronic storage as well as easier flow of information and data storage.
- (vii) Risk reduction – less risk of accusations of corruption through comprehensive data collection and better facilitation of needs assessments through data analysis.

Chapter 4. Public Procurement Regulations and Industrial Priorities

4.1 Pharmaceuticals and Medical Devices

4.1.1 Definitions and Rationales

Pharmaceuticals

The knowledge-driven industry is very small in Oman, accounting for only 0.6 percent of total manufacturing value added in 2015.⁸² The country currently imports more than 93% of its medications. The UNIDO manufacturing report notes the considerable potential for building a health cluster including pharmaceuticals. In pharmaceuticals, the patent of several drugs to treat autoimmune diseases are expiring, which could open an opportunity for Oman. Investors in healthcare, pharmaceutical companies, or hospitals in Oman are provided with a plot of land as part of a medical city. Establishing a strong pharmaceutical sector in Oman could be a gateway to East Africa and Iran, as well as to the GCC. Oman could focus on niche markets like halal pharmaceuticals, mHealth and development of orphan medicines which provide potential opportunities across the pharmaceutical value chain.

The Omani government has established a recent royal decree to widen the income generation capabilities of pharmacies, allowing them to reduce the price of drugs by more than 50% in some cases. The GCC pooled pharmaceutical procurement programme also took action to unify the price of drugs across all of its member states, which also reduced the prices of drugs in Oman. Prior to this decision, Oman had one of the highest prices for medication in the region.

Currently, the pharmaceutical industry in Oman produce only generics. This is because Oman is missing research laboratory centers that are needed to test, for example, biosimilar drugs. The total generic unit volume sales are stabilizing: although the market value is increasing. The competitiveness in this sector strongly depends on the ability to produce generics directly, a large internal market, competitive labour costs and strong international commercial relationships.

Some of the other GCC countries are producing pharmaceutical products under the license of major pharmaceutical companies, to obtain quality drugs and develop know-how as well as the potential for technology transfer. Generics have allowed for the possibility of buying much cheaper raw materials than the supply of large pharmaceutical companies. The pharmaceutical policy of the GCC changed direction abandoning the multinational partners in the production, creating a line of generic drugs and operate in competition with the main companies. The GCC pharmaceutical companies have achieved some success in reducing the prices of raw materials, but this was detrimental to the quality of their products. The quality of generic drugs has so far failed to satisfy branded products. Saudi-Arabia produces 59.4% of drugs in the region, followed by 18% in the UAE, 9.4% in Kuwait, 5.6% in Oman, 4.5% in Qatar and, finally, 3.1% in Bahrain. The market size of Oman is marginal compared to the total market of GCC. In terms of population in 2016, OMAN has 8,2% of GCC population, and in terms of market size in pharmaceuticals and medicinal products, it is about the 6% of the total market in GCC.

As noted in Chapter 2, Oman participates in the GCC 'group contracting' programme to centralize the tender and bid process for its six member countries, who then contract with and pay suppliers on their own. Originally, the GCC Member countries agree to purchase at least 60% of the total value of their requirements in each product category, while still allowing countries a degree of flexibility in their medical purchases. When producers contract individually with each country, they are obligated to offer the same prices across countries for the entire year as stated in their bids. The objectives of the programme are to achieve cost savings through bulk purchasing, ensure the continuous supply of medical products by reducing administrative.

⁸² UNIDO Report on Pharmaceutical Sector.

However, information received during interviews with the Ministry for Health Procurement Officials indicated that Saudi Arabia is no longer participating in the GCC pooled procurement programme and is developing its own pharmaceutical sector. Moreover, only one or two pharmaceutical procurements made through the GCC programme per year. Therefore the 60% spending target is not met by Oman.

Medical Devices

Prior studies on the potential of developing the medical device industry in Oman have focused on offsetting imports into Oman and the GCC market and utilizing domestic inputs. The GOIC specifically identified products that meet these parameters and leverage locally available materials, notably metals, plastics and chemicals, and planned GCC-wide developments in healthcare.⁸³

The GOIC research suggested two products: GOIC (2018):

- Hospital furniture (HS 940290) for the domestic market
 - raw material: stainless steel (HS 7218)
- Syringes (HS 392690)
 - raw material: plastics from domestic and regional markets.

The UNIDO sector report concluded that Oman needs to focus on a specific end market or final product category. The instruments category is comparatively less concentrated with some offshore manufacturing in place and relatively lower regulatory hurdles. As such, it offers the most potential for Oman to enter the medical device GVC, particularly in the areas of minimal invasive instruments, endoscopes or single-use instruments.

Field interviews with the Omani Ministry of Health Head of Contracts and Tender Sector provided information that the Ministry of Health is the largest procurer in Oman, along with the Ministry of Education, and procures over 150m OR annually.

The Ministry's main aim is to provide health services – supporting services and supplies, medicine, medical equipment, non-medicines. However, the field interviewees reported that most of the equipment was over 17 years old and not functioning properly, for example, x-ray machines and ambulances. The 2008 Tender Law provides the authorisation for ministries to tender contracts between 10,000-3m OM.

4.1.2 Deployment Options

- a) Change the Tender Law 2008 to reflect e-tendering facilitating for shorter timeframes E.g. 1 week – 10 days announcement period
- b) Further outsourcing of requirements: e.g. laundry
 - a. support SME activity: any tender announcement – 10% SME requirements
 - b. Contracts only for SMEs – cleaning, landscaping, laundry, maintenance

⁸³ The Medical Device Global Value Chain and Potential Opportunities for Oman. Prepared for UNIDO Stacey Frederick. January 24, 2019.

- c) Stricter offset enforcement of Circular 2001 Buy Local requirements by the Ministry of Labour. While there is a penalty for breach of Omanisation, at present this Penalty doesn't force contractor. There is insufficient capacity to supervise and implement penalty clauses.
- d) Fulfilling the 60% GCC pooled procurement pharmaceutical requirements and expanding the approach to include targeted medical devices. This could provide a wider more stable market for both Oman's medical devices and pharmaceuticals among the GCC countries.
- e) Purchase commitment guarantees by Ministry of Health provide stable customers for Omani medical device and pharmaceutical industry. Purchase commitment guarantees can target niche markets like halal pharmaceuticals, mHealth and development of orphan medicines, and frankincense based products which provide potential opportunities across the pharmaceutical value chain. Purchasing Commitments can be implemented in the short term. The Ministry of Finance/ Ministry of Commerce and Industry and the Ministry of Labour need to coordinate with the Ministry of Health to be in sync with the requirements of the medical device and pharmaceutical Industry.

4.1.3 Potential Costs

- Inspection and enforcement costs
- Identifying effective public procurement strategies to promote the Omani medical devices and pharmaceutical sector faces the immediate challenge of the lack of availability of domestically produced medical devices to meet government demand.

According to the UNIDO Report,⁸⁴ at present, Oman has no medical device establishments, but one manufacturer and exporter of medical supplies, which include gloves and medical gauze.⁸⁵ Moving into the medical device GVC is challenging because products that have lower regulatory hurdles such as disposables and supplies are also produced in large volumes and are already being produced in China at prices most countries cannot compete with. On the other hand, therapeutics are highly regulated and require medical expertise.

- A general and widespread lack of experts in pharmaceutical manufacturing processes also makes it very expensive to install a factory that complies with the necessary regulations. Without significant foreign investment in knowledge and production, protecting the internal market by favouring domestic companies and putting restrictions to foreign ones will not produce scale effects as a large number of different drugs will have to be produced on a small local scale for domestic use. This will always be more costly than imported drugs. Furthermore, protecting the internal market may be difficult with patent laws and international trade laws.
- To fulfil and expand the remit of the GCC Pooled Procurement Programme involves diplomatic and political will. This is particularly the case if Saudi Arabia is to be persuaded to re-join the programme.

⁸⁴ The Medical Device Global Value Chain and Potential Opportunities for Oman. Prepared for UNIDO Stacey Frederick. January 24, 2019.

⁸⁵ Annual exports are approximately \$5 million, of which most are to GCC countries (primarily Saudi Arabia and Qatar).

4.1.4 International experiences

Costa Rica

In 2017, medical devices became Costa Rica's top export, surpassing the agricultural sector for the first time in the country's history. There are now more than 70 medical device companies operating in Costa Rica.⁸⁶ After securing the investment of medical equipment giant Baxter in 1987, medical devices were targeted as a key sector. Costa Rica successfully leveraged Baxter's experience in the country, to attract a number of other similar companies.

Medical equipment exports from Costa Rica tripled between 2007 and 2017; with the life sciences sector overtaking agriculture to become the country's top export, valued at approximately \$3bn or 27% of Costa Rica's outgoing trade. Costa Rica's strategy began with disposables devices only, gradually expanding to include medical and surgical instruments, therapeutic devices, currently entering into diagnostic equipment. Cardio medical devices are by far the largest export.

However, public procurement was not the main element of this industrial strategy. First was a powerful fiscal incentive, in Costa Rica's free trade zone incentive system. By law, new medical technology firms could operate tax-free for a number of years, providing leeway to establish their operations and find their feet. Other factors are related to Costa Rica's high standards of education, which has boosted the country's pool of skilled labour, perfect for a highly regulated industry that must conform to exacting quality measures. Costa Rica established – in conjunction with the University of Minnesota – Latin America's first Master's degree in medical devices. Costa Rica is now working on government incentives promoting innovation.

Saudi Arabia

Most Saudi-based pharmaceuticals companies began as importing agents and distributors for foreign-made products. In 2016, 20% of the drugs consumed in the Kingdom were locally made, the majority of which are generics and less favoured by the population. Some 70% of the imports originate in Europe, 13.1% in the US, 12.3% from the GCC, and the rest from elsewhere.

The Saudi government's strategy to curb pharmaceutical expenditure and promote local production has resulted in generics becoming a fast-growing product. The value of generics has risen by 3% in Saudi Arabia Market share of regional companies in the kingdom increased by 7% in five years: a positive result of the government's policy of promoting domestic manufacturing. As of 2012 the sector comprised 27 companies 2012, taking around 18% of the market's value between them.

The National Transformation Programme (NTP), which runs through 2020 outlines a series of key performance indicators (KPIs) to achieve by 2020. The Ministry of Commerce and Industry is tasked to "develop six attractive and financially viable pharmaceuticals subsectors". The development of pharmaceuticals is listed as a strategic objective, aiming to boost the proportion of local manufacturing in the sector to 40% by 2020. The MoH also comes in on this KPI, with an instruction to further localise the industry, both in sources and employment. All these KPIs, if achieved, would place Saudi Arabia above regional benchmarks, with locally manufactured pharmaceuticals accounting for 12% of total market value in the GCC, with a 1% share of GDP.

UAE

A drug manufacturing hub in Dubai is being developed at Dubai Science Park in Al Barsha. The facility, Pharmax, produce generic medicines for a range of chronic illnesses, including diabetes, cholesterol, psychiatric and neurological disorders, cardiovascular and gastric ailments. With Dubai and Abu Dhabi now having universal medical coverage, there is a push for increased usage of generic drugs in

⁸⁶ <https://www.medicaldevice-network.com/features/inside-costa-ricas-super-sized-medical-device-sector/>

prescriptions in a bid to keep costs down. Pharmax aims to bring in variations of branded drugs as soon as they get off patent. The intention is to make generic drugs locally that are on par with anything coming in from the US or the EU.

As part of its efforts to grow and diversify its economy through nurturing local and international partnerships and opportunities, improving knowledge transfer and creating job opportunities for UAE nationals in the private sector, the UAE has implemented an In-Country Value (ICV) system when evaluating commercial bids and inviting companies to participate in government-issued tenders.

Box 1.2. Generic pharmaceuticals in Mexico: Improved procurement securing better value for money

Between 2003 and 2006, procurement of generic pharmaceuticals by the Mexican social security agency, IMSS, was on the basis of fragmented and wholly domestic (that is, reserved to national firms) tendering procedures. There were, on average, nearly 100 auctions per product per year, with each consuming area (region or general hospital) holding its own tenders separately and, in some instances, several times a year for the same product. Many of these auctions included multiple provision rules and relatively high reference prices.

In 2007, however, IMSS revised its procurement strategy. It began opening tenders to international bidders, consolidating purchases into only one or several annual national contracts per product, including aggressively low maximum prices based on market research. As a result, evidence of collusion among bidders declined greatly, and winning tender prices for generic pharmaceuticals decreased dramatically: 18 of the 20 most important products, representing 42% of purchases, registered an average price decrease of 20%.

Source: (OECD, 2013^[11]).

4.1.5 Expected Impact

- Removing or reducing the bid bond, documentation and registration costs will encourage greater participation by SMEs.
- Greater outsourcing will promote greater participation by SMEs
- Stricter enforcement and penalties for non-fulfilment of Circular 2001 will improve the participation of SMEs and Omani businesses.
- Updating the Tender Law deadline requirements to reflect the role of e-tendering
- The domestic medical device and pharmaceutical market is currently unable to supply the total needs of government, so a public procurement local content strategy will have limited impact until the domestic industry has developed sufficiently. As noted in the UNIDO Report on Medical Devices, steps to develop a manufacturing facility to supply the domestic market are different than those need to enter the FDI-driven, export-oriented, medical device GVC.⁸⁷
- The expansion of the GCC group procurement programme would require negotiation and collective decision making among the GCC which is a medium term strategy, and would ideally include the participation of Saudi Arabia.

⁸⁷ The Medical Device Global Value Chain and Potential Opportunities for Oman. Prepared for UNIDO Stacey Frederick. January 24, 2019.

- Higher prices and less value for money: It is relatively uncontested that, in the short-term, offsets including local content requirements inflate costs. They generally increase prices while reducing quality. They also include increased administrative burden due to the need for skilled implementation, careful monitoring and evaluation.

4.2 Solar Panels

4.2.1 Definitions and Rationale

In Oman, there is interest not only in the potential of solar energy for achieving national sustainability targets. There is also interest in the potential to manufacture products and system components for solar power generation, as an economic activity that could help Oman's economy to diversify away from hydrocarbons.

Manufacturing for the solar energy sector is not a prominent activity in Oman. Oman is a net importer of solar energy manufactured goods, such as photovoltaic cells. Between 2006 and 2016 Oman imported, on average, USD 1.02 million per year of photovoltaic cells, mainly from China and India. This could partly be attributed to the early stage of development of the domestic solar energy sector.⁸⁸

Although the market size is estimated at approximately 300,000 customers, residential customers have limited incentives for using solar energy technologies for electricity generation given the reduced cost advantages, operational complexities and long payback periods (10–12 years ROI), as indicated by the consulted local stakeholders. Governmental initiatives have recently been introduced to enhance public and social awareness for efficient energy consumption, this should increase the demand for solar installations, which is still low. Consequently, the size of the domestic market is relatively limited, which diminishes the interest of potential investors in establishing solar manufacturing capabilities for the domestic market.

Nevertheless, installed solar energy generation capacity in Oman has seen considerable growth in the last five years. Additional developments suggest that this growth might continue in subsequent years.

- The enhancement of the north–south interconnect project and a wholesale electricity spot market enabling the potential for future electricity trading from 2020-30 could increase the demand for solar energy.
- Leading authorities have established a renewable-energy development plan that includes four independent solar power (IPP) projects, adding a planned 2000 MW of solar generation capacity to the electricity supply landscape by 2024.⁸⁹

The Oman government can use public procurement to stimulate industrial development in high tech industries such as solar panels, through a combination of two main ways. First through a demand-driven strategy, which focuses on increasing the demand for certain products or technologies and therefore are “essentially market-enhancing” mechanisms that either create a market or increase the certainty of a market transparency and competition. It can also implement supply-driven strategies, such as tax reductions and financial incentives, for local companies to foster firms by providing funds and inputs and reducing the costs.⁹⁰

⁸⁸ Policy Links. Developing Domestic Manufacturing for the Solar Energy Sector in Oman: Opportunities and Challenges. 2019. A report prepared for Oman's Ministry of Commerce and Industry (MOCI), on behalf of the United Nations Industrial Development Organisation (UNIDO)

⁸⁹ Policy Links. Developing Domestic Manufacturing for the Solar Energy Sector in Oman: Opportunities and Challenges. 2019. A report prepared for Oman's Ministry of Commerce and Industry (MOCI), on behalf of the United Nations Industrial Development Organisation (UNIDO)

⁹⁰ Chaudhuri, 2010: 62. *Ibid.*

On the demand side, an offset or local content requirement (LCR) can be applied through a public procurement contract in different ways:

- to a certain percentage of project cost (e.g. solar power projects) or
- to certain components (e.g. solar photovoltaic (PV) cells and modules).

The aim is to ensure private and public investment benefits the local economy by protecting infant industry and incentivising foreign firms to open domestic manufacturing facilities or outsource manufacturing to domestic firms.⁹¹ Holding the promise of job promotion, local economic development and export potential, LCRs can help to build support for solar panel deployment strategies amongst powerful interest groups. However, the value creation in the different stages varies significantly and needs to be taken into account in the overall industrial strategy.

Some governments have attached domestic content requirements for solar energy generation projects to its feed-in tariff. Renewable energy investors must present a domestic content plan that shows that they will comply with the domestic content requirements. A feed-in tariff is generally implemented by the government of a country. It guarantees grid access to renewable energy producers, long term purchasing contracts with electricity utilities and fixed purchase prices that are independent from the existing market price. The innovation risk is essentially born by the government or the end consumers, who reimburse the electricity utilities for the price premium that the utilities then pay to renewable energy generators.

4.2.2 Deployment

In the short to medium term, Oman can use procurement policy instruments to promote solar power industry through:

- public competitive bidding resulting in a power purchase agreement to procure utility-scale renewable energy
 - an offset in the form of specified local content as a key condition in the evaluation of project bids with an objective to have, as in Saudi Arabia - 50% local content or higher, in introductory call, and reaching to 60% or higher in the first tender round, then 70% afterwards.
- FiT programmes reward small power producers with premium prices for each unit of renewable energy electricity produced.
- Net-metering allows small renewable energy self-producers to send excess electricity to the grid and deduct it from the monthly bill.

4.2.3 Potential Costs

It is relatively uncontested that, in the short-term, offsets or local content requirements (LCRs) inflate power costs. Even Industry Canada (2011), while accepting the role of offsets in creating a wind and solar manufacturing industry, admits that they could initially drive up manufacturing costs and hence electricity retail prices. This is because offsets force the producer to purchase local inputs, which are usually more costly than those produced abroad (otherwise, there would be no need for offsets). Eventually, the local producer will pass this burden partially or fully to the domestic consumer.

⁹¹ Lewis and Wiser 2007; Tawney 2012.

The review of the offsets in the solar panel industry therefore indicates mixed results. One study of India concluded that, rather than supporting the local crystalline silicon manufacturing industry, offsets resulted in amplifying a bias towards foreign thin film PV manufacturers, whose products were exempt from the offsets.⁹² Oversupply in a crowded and competitive manufacturing market led to price reductions which outpaced reductions in cost. Many companies failed to survive, let alone make profits.⁹³ The limited innovation capabilities of Indian solar PV manufacturers were severely constrained by their lack of productivity. As such, they were not able to take advantage of offsets to build up competitiveness in the long-term.

There are also concerns that offsets do not generate additional jobs.⁹⁴ For example, in the RE sector, there are two potentially opposing effects from offsets. On the one hand, there is the output effect: energy costs more to produce because input prices are higher. Hence, there is less RE production, which means less employment in the electricity generation sector. Analysis does seem to ignore the learning-by-doing potential and related medium-term spillover effects, which also include job creation. As such, offsets have to be implemented in coordination with energy policy.

There are fears that offsets do not seize opportunities in non-tangible and service sectors because they overemphasize the manufacturing portions of the value chain. If this were the case, offsets would only drive up short-term costs without ultimately reaping large opportunities, especially the employment associated with the non-manufacturing elements of the RE sector such as engineering, installation and maintenance. However, services are particularly important in RE development and technology development and are certainly an element that should be included in the equation by adding them to the local component list.

High local content requirements means that the market is more shielded from the competitive international market. If there are no plans to eventually reduce the offset or the financial benefits to which it is attached, or if there is no quality assurance programme, then such offsets can lead to a reduction in quality. There is a role for LCRs if they are gradually introduced in stable commercial and domestic markets with sufficient potential. Otherwise, businesses will not be keen on investing in domestic manufacturing. In addition to market stability, they see a sufficient market size as an important precondition for generating welfare effects from the use of LCRs. This eventually comes down to the ability to offer a stable demand. If there is no such demand, the higher costs as a result of LCRs may discourage investors from entering this market. Similarly, a large and stable market offers more possibilities for learning-by-doing.⁹⁵

Compliance Issues

It should be noted that there are also WTO compliance issues for a solar panel or FIT programme that incorporates local content requirements or in-country value, that are applicable to Oman despite not yet acceding to the WTO GPA. The 2011 WTO *Canada-Feed-in Tariffs* (FIT) dispute emerged when Japan and the EU challenged the legality of the domestic content requirements⁹⁶ in the FIT programme⁹⁷ established

⁹² CEEW /NRDC 2012a, 20–21.

⁹³ REN21 2012, 49.

⁹⁴ Rivers and Wigle (2011)

⁹⁵ Lewis & Wiser, 2005.

⁹⁶ As defined in the 2011 WTO GPA, offsets are ‘any condition or undertaking that encourages local development or improves a Party’s balance-of-payments accounts, such as the use of domestic content, the licensing of technology, investment, counter-trade and similar actions or requirements’.

⁹⁷ Under the FIT stream, electricity generation facilities utilizing windpower and solar PV technologies must comply with “Minimum Required Domestic Content Levels”, which must be satisfied in the development and construction of these facilities. The microFIT stream also imposes Minimum Required Domestic Content Levels, but only on generation facilities utilizing solar PV technology. See footnote 91.

by the Canadian Province of Ontario.⁹⁸ The FIT Programme imposes a "Minimum Required Domestic Content Level" on electricity generators utilising solar PV and windpower technologies that compels them to purchase and use certain types of renewable energy generation equipment sourced in Ontario in the design and construction of their facilities.⁹⁹ However, a measure that explicitly prevents the "purchase" of a like product from certain Members not parties to the WTO GPA would be deemed in violation of the NT requirement articulated in Article III:4.

In the *Canada-FIT* dispute, the WTO Appellate Body found that the local content requirements of the FIT programme related to the electricity generation equipment rather than the electricity itself. Consequently, it was not a government procurement and prohibited. The WTO Trade Related Investment Measures (TRIMs) also prohibits measures that require the purchase or use by an enterprise of products of domestic origin or from any domestic source. Additionally, under the WTO ASCM, a specific financial contribution to the domestic undertaking that confers a benefit through purchasing goods or providing goods or services is an actionable subsidy. While if the financial contribution is contingent, the use of domestic over imported goods, it is a prohibited subsidy. Since then similar disputes have emerged over India's local content requirements for solar cells, Brazil's discriminatory tax charges and US- China, US-India renewable energy measures. *Brazil-Measures Concerning Discriminatory Taxation and Charges*. There has also been a spate of countervailing duty cases levelled at China, India and the US solar panel industries.

In sum, it is clear that for offsets to achieve their stated policy goals they have to be carefully tailored to meet international trade obligations, well targeted on the sector being developed and thoroughly monitored and evaluated throughout their predetermined life life-span and graduation strategies.

⁹⁸ A FIT is an increasingly employed instrument for promoting investment in renewable energy typically through fixed pricing for the purchases of renewable energy power above the market price for electricity. See for example: <http://www.energysavingtrust.org.uk/Generating-energy/Getting-money-back/Feed-In-Tariffs-scheme-FITs>.

⁹⁹ Panel Report, *Indonesia – Certain Measures Affecting the Automobile Industry*, WT/DS54/R, WT/DS55/R, WT/DS59/R, WT/DS64/R adopted 23 July 1998, para. 14.82.

4.2.4 International experiences

Figure 8 Local Content Requirements in Clean Energy in Selected Countries¹⁰⁰

Country	Technology	LCR % (start year)	LCR % (2012)	Notes and Remarks
Brazil	Wind	60% (2002)	60% (2012)	
China	Wind	20% (1997)	70% (2009)	The LCR requirement was formally abolished in 2009
France	Solar	(2012)	60% (2012)	10% bonus on EDF repurchasing price
India	Solar	30% (2011)	30% (2011)	Feed-in tariff conditionality
Italy	Solar	Variable (2011)		5 to 10% bonus if local content used
Ontario (Canada)	Wind	25% (2009)	50% (2012)	Feed-in tariff conditionality
Ontario (Canada)	Solar	50% (2009)	60% (2012)	Feed-in tariff conditionality
Québec (Canada)	Wind	40% (2003)	60% (2012) ¹	
South Africa	Wind	35% (2011)	>35% (2012)	
Spain	Wind	70% (2012) ²		
Turkey	Wind	Variable (2011)		Additional feed-in tariff if local content used
Turkey	Solar	Variable (2011)		Additional feed-in tariff if local content used

Table 8: Renewable energy support policies

Country	Public Competitive Bidding	FiT	Net Metering
Algeria	Exists for development of large-scale private renewable energy projects.	FiT adopted in 2002. However the Algerian FiT programme is being reintroduced.	No
Bahrain	No	No	No
Comoros	No	No	No
Djibouti	No	No	No
Egypt	Exists for development of large-scale private renewable energy (wind and solar) projects.	FiT under preparation.	In January 2013, EgyptERA adopted a net-metering policy that allows small-scale renewable energy projects to feed in electricity to the grid. Generated surplus electricity will be discounted from the balance through the net-metering process.
Iraq	No	No	No
Jordan	Exists for development of large-scale private renewable energy projects.	The Reference Pricelist Record for the Calculation of Electrical Energy Purchase Prices from Renewable Energy Sources Issued by the Council of Commissioners of ERC to The Renewable Energy and Energy Efficiency Law No (13) for the Year 2012.	Net-metering is authorised in the Directive governing the sale of electrical energy generated from renewable energy systems issues by the Council of Commissioners of Electricity Regulatory Commission pursuant to Article 10 (b) of the Renewable Energy and Energy Efficiency Law No (13) (2012).
Kuwait	Exists for development of large-scale private renewable energy projects.	No	No
Lebanon	Exists for development of large-scale private renewable energy projects.	No	Decision of Board of Directors of Electricité du Liban (EDL) legalised net-metering since 2011. As of late 2013, 120 applications were received and 119 two-way meters were donated by LCEC.
Libya	No	No	No

¹⁰⁰ Clean Energy Technologies and the Trade System. Proposals and Analysis. December 2013 ICTSD E15 Expert Group on Clean Energy Technologies and the Trade System Compilation Report. p20.

Country	Public Competitive Bidding	FIT	Net Metering
Mauritania	No	No	No
Morocco	Available for large-scale renewable energy projects.	No	Net-metering is not available through the low to medium-voltage lines. Auto producers can sell electricity to the grid on the high-voltage and extra high-voltage lines.
Oman	Exists for the development of large-scale private renewable energy projects.	No	No
Palestine	Available for large-scale private renewable energy projects.	FIT for renewable energy adopted by the same decree (2012), but it is not in operation yet.	Decree approved by the cabinet in March 2012 decision No 13/127/16 on the use of renewable energy.
Qatar	No	No	No
Saudi Arabia	Yes - municipal and national levels.	Under discussion. Saudi Arabia is considering a FIT programme for small-scale renewable energy power producers.	No
Somalia	No	No	No
Sudan	Procurement and contracting law, chapter 5, article 13.2 (2010) provides a legal basis for organising a public competitive bidding process for renewable energy projects. No tenders have been announced yet.	No	No
Syria	Exists for the development of large-scale private projects.	FIT enacted in 2012.	Net-metering is approved.
Tunisia	No	No	Net-metering policy for small-scale grid connected renewable energy projects is approved by decree N°2009-2773 (2009) and decision of Minister (2010). Net-metering policy allows feeding excess electricity to the grid; if the balance of the producer is positive, it gets banked.
UAE	Exists for the development of large-scale private renewable energy projects.	Dubai is considering a FIT.	No
Yemen	Available for large-scale private renewable energy projects.	No	No

Sources: RCREEE (2013) Renewable Energy Country Profile; RCREEE (2013) AFEX Renewable Energy

Figure 9: The 2013 White Paper detailing the competitive procurement process of Saudi Arabia's K.A.CARE programme specified an objective of 50 per cent of local content or higher in introductory calls.

Cost category ⁵¹	Equipment or service	Local content factor
Engineering	Service	50%
Legal	Service	50%
Other professional services	Service	50%
Construction labour and management – Saudi	Service	50%
Construction labour and management – Other	Service	0%
Polysilicon manufacturing	Equipment	50%
Wafers	Equipment	100%
Cells	Equipment	50%
Modules	Equipment	50%
Inverters	Equipment	100%
Racking system	Equipment	100%
Balance of plant	Equipment	25%

A valuable example for Oman could be taken from Saudi Arabia's proposed competitive procurement process for the renewable-energy programme. In addition to clear requirements for training, job localisation, and research and development for potential renewable-energy project developers, the competitive procurement process proposed by Saudi Arabia's K.A.CARE includes detailed local content rules for distinct types of equipment and services included in renewable-energy projects. Local content targets can be as high as 100 per cent for manufactured components such as wafers, inverters and racking systems, while other core components such as PV cells include a local content target of 50 per cent. Although Oman already has a general local content policy for some industries, local content factors tend to be lower than those shown in Saudi Arabia. Higher local content factors for solar energy systems and components made in Oman, based on a thorough mapping of existing domestic supply-chain capabilities, could foster the development of manufacturing activities to supply demand from the growing domestic solar energy sector.¹⁰¹

4.2.5 Expected impact

- Greater take up of FIT and meter reading programmes
- Stimulate renewable energy market and solar panel industry
- Higher costs until competitive – potential bankruptcies
- Bottlenecks in supply until meeting demand and full capacity
- Bureaucratic burden – administration, monitoring and enforcement costs

Government purchasing of energy generated by solar panels that have offsets are unlikely to help local firms fully develop the technological capabilities needed to be globally competitive in the long-term. Offsets often overemphasise manufacturing, neglecting other equally important, and potentially more value-added, parts of the value chain. For example, Tawney notes that half the value in the US solar PV value chain comes from services, such as engineering, logistics and labour.¹⁰² Offsets cannot address systemic barriers to the development of local technological capabilities that local manufacturing firms might face. However, they can lead to learning by-doing which is necessary to adapt the technology to local conditions and ensure effective operation and maintenance in the field.

4.3 Healthy Food

4.3.1 Definitions and rationale

Healthy food is defined here as food that is nutritious and rich in components that would reduce or at least would not increase the incidence of diseases.¹⁰³ A key aspect of healthiness or unhealthiness is related not only to the ingredients of a food preparation but also on how the raw materials have been produced and processed as some inputs may be contaminated through for example, pesticides or heavy metal during its processing.

As a consequence of oil in all GCC countries, the life style in Oman has changed sharply with increased consumption of ready to eat food and 'fast food' with eating out becoming prevalent in the young generation. An increasing number of Oman's population was classified as having unhealthy eating habits, and were considered obese or in danger of becoming obese. At the same time Oman has gone through a

¹⁰¹ UNIDO solar panel report.

¹⁰² (Tawney 2012, 12)

¹⁰³ UNIDO Healthy Food Report.

transformation in the disease burden. The population's health is becoming dominated by the NCD problems of diabetes, heart diseases, hypertension, strokes, , chronic respiratory diseases, cirrhosis and cancers whereas the past problems of childhood malnutrition are decreasing.¹⁰⁴

Until the 1970s agribusiness and food sector were focused on the self-sufficiency of farmers and fisherfolk. The contribution to country's GDP, employment and food security has been always significant, with the fisheries industry as the primary non-oil export earner for Oman. However, the production and the processing of food is no longer able to supply the rising demand and diverse needs of consumers. Local agricultural production is limited to the production of dates, vegetables, poultry, dairy and citrus. Oman is reliant on imports of large volumes of both fresh and processed foods to meet domestic requirement. Given that Oman is a net importer of food, the policy strategy of increasing local content requirements for the procurement of health food products produced in Oman will largely need more investment in this sector.

Oman has adopted a comprehensive development strategy aimed at developing alternative sectors to decrease the import and increase the exportation of processed food. This can be done through adapted technologies and innovations, better capacities and professionalism of farmers to increase agricultural productivity and the value of domestic production, while reducing its environmental footprint and complying with sustainability criteria. This policy seeks to increase the fish and agriculture sectors that become more and more crucial in the frame of food security and self-sufficiency plans to grant adequate access to food to the consumers.

There is potential for public procurement to promote the consumption of these food products, as well as develop export sectors such as fish products, as the rich fishing grounds are not yet fully explored or exploited. The significant value and volume of food public procurement means that Oman's public institutions can drive the market and prompt innovation towards the provision of more nutritionally balanced foods and healthier diets in a fair and transparent way. Public sector institutions represent a significant part of the procurement of any national food economy and a large portion of food people eat every day.

The benefits of public procurement of food for health include:

- Increased availability and acceptability to nutritious and safe food
- Improved dietary habits and reduced incidence of childhood obesity and overweight
- Positive effects on school attendance and performance
- Minimisation of health inequalities
- Development of health-minded citizens, children and public institutions

4.3.2 Deployment

Oman procurement policies could promote the health food industry, particularly in schools, hospitals and government institutions, in the short to medium-term by:

1. Establishment of the intersectoral working group: public procurement, agriculture, education, public health, economic development and technology to establish systematic action plan including:
 - a. Market research
 - b. Practical, flexible catalogue of foods: list and description of products,
 - c. Categorization of products: defining simple measurable quality criteria

¹⁰⁴ UNIDO Healthy Food Report.

- d. Availability on the market: Seasonal calendars
2. Design clear tender specifications that the products are fresh, have low sugar, low fat content, do not include unhealthy preservatives or additives and promote fresh fish consumption as a healthy alternative to meet.
This promotes local products and offers a secure market for small producers that conform to sustainability and food standards requirements.
3. Offer price preferences for local SMEs and Local Community Companies to supply government catering and other food requirements.
4. Establish offsets through local content requirements for locally produced food set out in reliable catalogues.
5. Lot splitting to allow small farmers, fisheries and food producers to sell produce rather than relying on large agro-industry and imports.
6. Provide examples of relevant procurement tenders that have addressed the standards - preparation of procurements templates.
7. Educational training for institutions and individual workers, Training of local primary producers and local community companies (LCC)

4.3.3 Potential Costs

- Although there are still fish reserves in Oman's fishing waters, fishing must be sustainable and Oman must therefore promote sustainable fishing practices in line with international norms. This will serve the international market and avoid trade disputes such as Shrimp-Turtle, Tuna-Dolphin etc.
- Inconsistent or insufficient supply chains – bottlenecks in supply
- SME and Local Community Companies certification and compliance costs with international food standards: Codex and the WTO Sanitary and Phyto-Sanitary Agreement
- Lot splitting can cause administrative burden and disruption to consistent supplies from multiple firms.
- Administrative requirements:
 - o Establishment of the intersectoral working group to produce systematic action plan and catalogue of goods
 - o Educational training (skills) for institutions and individual workers, training of local primary producers and cooperatives to submit public procurement tenders
 - o Educational training (skills) for institutions and individual workers, training of local primary producers and cooperatives in compliance: health and safety, environmental requirements;

4.3.4 International experiences

Figure 10: United Kingdom: The Plan for Public Procurement¹⁰⁵

The plan sets what standards the public sector and suppliers are encouraged to follow when buying food and catering services. It proposes a new but voluntary approach, involving use of a balanced scorecard and an e-marketplace, to improve food procurement in the public sector.

The plan focuses on:

- provision of 'toolkit' a which enables food procurers to consider a variety of factors when making decisions about procurement
- working together with industry, procurers, researchers and farmers to support opportunities for British grown produce and food within the public procurement market
- ongoing work to develop the toolkit through five different working groups covering procurers, suppliers, research and technology bodies (focusing on innovation), assurance schemes and Local Enterprise Partnerships

The Plan: toolkit

This toolkit brings together the relevant documents and information, which include:

- revisions to the mandatory Government Buying Standards for food and catering
- a new 'balanced scorecard' tool to help public sector buyers and their suppliers understand and apply the Government Buying Standards
- an on-line procurement portal to help put public sector buyers and potential food and catering suppliers in touch with each other
- case studies to demonstrate how buyers and food suppliers can work together to procure food efficiently and sustainably

In the EU, the social food service market is significant for businesses and public health. It is accepted that progressive and targeted public procurement of food for health can reward food business operators who provide nutritionally balanced meals and food products, prompting innovation, food reformulation and social responsibility to achieve better diets and positively impact public health. Positive evidence about the health benefits of better school food provision via procurement is beginning to emerge in the scientific literature. The EU legal framework offers substantial scope for health-sensitive public procurement of food. However, authorities face a number of challenges including the translation of school food standards into adequate procurement contract language. The experience in the EU indicates that to ensure the smooth implementation of public procurement of food for health, it is important to set clear specifications about the foods and food services to be procured.

¹⁰⁵ <https://www.gov.uk/government/publications/a-plan-for-public-procurement-food-and-catering>

4.3.5 Expected impact

- Healthier food consumption and dietary culture
- Increased contribution of agriculture and fish to GDP
- Increased food security / self-sufficiency
- Increased domestic employment
- Higher costs where domestic prices are higher than imports
- Supply chain bottlenecks

4.4 Fragrances

4.4.1 Definitions and Rationales

Frankincense is an important commodity for Oman since it is to the gene center of *Boswellia sacra* which is regarded as the species from which best quality frankincense oleoresin is obtained. Several grades of frankincense oleoresin and its essential oil are produced and mainly used domestically or are exported. However, there is no standard for frankincense. Its' quality is generally assessed by its visual appearance. The same species also grows naturally in Yemen, Socotra, Somalia and Ethiopia and frankincense production and export strategies in most of those countries are also implemented.

Research into the global frankincense industry suggests that the production of frankincense oleoresin is compromised by factors related to tree growth, climatic conditions, unsustainable harvests and gaps in the market supply chain. While the equal distribution of benefits at the grassroots level and low community awareness about the harvest are challenging to the sustainable supply of frankincense.¹⁰⁶

Indeed, the UNIDO fragrance sector report notes that Oman is an importer of essential oils, odoriferous substances and mixtures, perfumes and toilet waters and incense materials. Oman is also an importer of natural gums, resins, gum resins and oleoresins. In 2016, Oman imported \$4.9 million worth essential oils and \$47.1 million worth odoriferous substances and mixtures. The same year, Oman imported perfumes and toilet waters worth \$ 58.5 million and exported \$13.4 million worth of the same. Omani fragrance companies import fragrance materials from abroad for bottling and packaging in Oman. Such products are exported as finished products, but compared to these import figures, fragrance exports are negligible.¹⁰⁷

The UNIDO fragrance sector report¹⁰⁸ further indicated that Oman is not utilizing fully its domestic natural fragrance resources, which includes frankincense. The fragrance and perfumery manufacturers are mostly micro or small SMEs, except for Amouage. Where available, essential oil of frankincense is distilled locally and all the other raw materials, packaging materials, bottles, and boxes are imported. Exports of perfumes and toilet waters are therefore not manufactured goods. Good quality wholesaler type suppliers in Oman are unavailable. Amouage stated that they were aiming at exporting the products instead of selling them in Oman.

Since frankincense is not only a source of essential oil but also a source of boswellic acid and its derivatives, with potential use in medicine and cosmetics. The UNIDO report recommended that Medicinal Plants and Marine Natural Products Research Centre of the University of Nizwa as a research base for developing fragrances using locally available materials for cosmetics and toiletries, and pharmaceuticals. Quality standards for frankincense resin, frankincense oil and other natural materials can be developed in the centre using its admirable infrastructure and capable academic staff. Frankincense tourism can also be a potential area of development in Oman.

¹⁰⁶ Al-Harrasi A., Khan A.L., Asaf S., Al-Rawahi A. (2019) Frankincense: Tapping, Harvesting and Production. In: Biology of Genus Boswellia. Springer, Cham.

¹⁰⁷ insert

¹⁰⁸ insert

4.4.2 Deployment options

1. Strict implementation of offsets requiring specified levels of local content for Omani produced essential oils and odoriferous substances and mixtures. While domestic supply is unlikely to satisfy 100% of demand, the requirements should be set to absorb local supply.
2. Guaranteed public procurement purchasing commitments to offer security to local frankincense producers and manufacturers for off-the-shelf products, such as hygiene and cleaning equipment directly used by government institutions, as well as developing new frankincense markets for cleaning, medicinal and pharmaceutical products. For example, the UK National Health Service undertakes centralised drug purchasing, offering long-term contracts and economies of scale.
3. Splitting lots for SME encouragement
4. Joint-bids for collectives of SMEs or local community companies to tender for bids
5. Technical assistance and capacity building for encouraging new and established SME producers of essential oils and odoriferous substances and mixtures to tender for public contracts
6. Advocate international standards and specifications for high quality frankincense matching local standards

4.4.3 Potential Costs

- Supply shortages
- Price increases
- Risk on new product markets

4.4.4 International experiences

Not identified.

4.4.5 Expected impact

- short term – price rises, supply side bottlenecks and research and capacity building costs
- medium term – development of frankincense fragrance industry through effective procurement demand side policies stimulating investment in the production and processing of frankincense
- long term – leader in development of essential oils and odoriferous substances and mixtures used in the production of cosmetic, medicines and cleaning products

4.5 Waste management / Recyclables

4.5.1 Definitions and Rationale

In Oman there are more than 350 registered landfills and dumpsites alongside illegal and unmonitored dumping grounds. Waste management is a challenge for Oman because there is limited land available and so any incorrect disposal of waste would be more likely to impact on the environment and public health. The country generates around 1.7 million tonnes of waste each year, which is about 1.2 kg per person, per day.¹⁰⁹ The field interviews undertaken with the Sultan Qaboos University Procurement Office indicated that there was low public awareness on the importance of recycling and waste management. Pilot projects to differentiate recyclable and non-recyclable products in university campus waste disposal facilities had failed due to lack of take-up. Government initiatives to increase public awareness of the importance of sustainable waste management will help to stimulate and sustain Oman's recycling industry.

The industry of recycling involves two different but inter-related markets: a market for recyclable waste and a market for recycled materials. The growth of markets for many classes of potentially recyclable materials is typically due to both policy incentives and more general commercial conditions. In many cases their development is supported directly by public authorities through measures such as public procurement schemes, as well as collection schemes for recycled materials, deposit-refund systems, for example. Sources of market inefficiency in the recycling market can be reduced by public policy interventions.¹¹⁰

Public procurement can provide conditions that stimulate the development of new products and innovative solutions, as well as creating new business and markets for such products, that is, products that are of considerably better quality in terms of recyclability, recycled materials, disassembly, long life span, and so on. This approach addresses early adoption of products that have been commercialized, but have not yet been on the market for a long time, or pre-commercial innovations developed as a result of the procurement process. In addition, the procurer's ability to conduct a process of innovative procurement, pre-commercial procurement, or research and development project may play a key role.

Oman could be a regional leader in using public procurement policy to help achieve a circular economy (CE). This aims to maintain the value of products, materials, and resources in the economy by closing material loops and minimizing waste generation. Circular public procurement can occur through the procurement of better-quality products in circular terms, the procurement of new circular products, the use of business concepts that support the CE, and investments in circular ecosystems. Several sectors and product groups have been identified as having potential for circular procurement, such as construction, waste, and wastewater management, transportation, food, and catering, furniture, and textiles.¹¹¹

4.5.2 Deployment

1. Procurement contract technical specifications to include regulatory targets: minimum requirements for public offices, in the form of percentage of recycled materials. This provides a market for recycled products.
2. Procurement Technical specifications set criteria and requirements for the extension of product life spans, efficiency and/or intensity of use, and efficient recycling of biological or technical materials, as well as for the securing of clean and non-risky recycles.
3. Technical specifications defining quality standards for recyclates / certification schemes for recyclates – defines the market for recyclates.

¹⁰⁹ <https://www.recyclingbins.co.uk/blog/recycling-around-the-world-oman/>

¹¹⁰ OECD: 2007. "Policy brief – Improving recycling markets".

¹¹¹ Katriina Alhola Sven- Olof Ryding, Hanna Salmenpera and Niels Juul Busch. Exploiting the Potential of Public Procurement Opportunities for Circular Economy. *Journal of Industrial Ecology*. Volume 23, Number 1. 2018.

4. Enforcement of a waste legislation setting specific targets for the collection and recovery of selected waste fractions and types – provides a market for recyclable waste;
5. Guaranteed purchasing and price commitments for innovations in recyclates including bulk purchases. Price volatility for recyclable materials is generally greater than for virgin materials which are close substitutes. This price volatility leads to uncertainty, and can discourage investment, thus undermining the financial viability of recycling. The risk aversion associated with the uncertainties related to recyclables quality can be addressed by the government as leading buyer.
6. Performance requirements: extended producer responsibility schemes which require firms, which manufacture, import and/or sell products and packaging, to be financially or physically responsible for such products after their useful life: life cycle approach, and life cycle costing, as well as criteria concerning reuse and recycling of materials – provides a market for recyclable waste.
7. Separation of activities from collection and transportation to reuse and recycling. Dividing waste management contracts into smaller, separate contracts increased the number of potential suppliers, specifically small to medium enterprises, which in the long term will stimulate local and regional business activities, lower prices, and make site-specific adaptations possible, to the benefit of the environment.
8. Market dialogue and cooperation between procurers and actors in the supply chains are important for the future development of circular procurement.
9. Public procurement regulations define sustainability and circular targets in their procurement strategy and policies.
10. Public authorities undertake public awareness campaigns on sustainability and the circular economy
11. Tender Board to build-up management capabilities and procurement skills in circular public procurement.
12. Tender Board to collect research data and life cycle assessment–based information when identifying significant environmental and circular aspects and goals in their procurement.

4.5.3 Potential Costs

1. The recycling culture and the availability of recycling technology and firms is currently low in Oman. Many of these policies can be activated only when a country has the industrial capability to reprocess recycled materials into secondary materials, which enter new products. At present in Oman, the reprocessing industry is not active, with the exclusion of the reprocessing of end-of-life car-tires and acid lead batteries by private entrepreneurs and the recovery of treated sewage and oil-well waters by national public companies.
2. There are technological externalities related to the products from which secondary materials are derived and the difficulties created by products which are not designed for materials recovery: the increasing complexity of product design, and of the materials used, has driven up the cost of recovering recyclable material in many markets, and in some cases has made it altogether impossible.
3. Costs of enacting regulation and protocols. Oman requires a detailed legislation of the management of household and production waste: recycling targets for household and packaging.

4. The law should be clear on the conditions for SMEs and other actor to conduct waste collection: such as licensing associated to waste types and source; vehicles tagging, and the approval procedure which leads to the acceptance of a recycling process for industrial waste types.
5. There are financial, health and safety risks associated with using public procurement to support new cradle to cradle innovation.

4.5.4 International experiences

Figure 11: Public procurement and recycling and waste management case studies

Case#	Procuring organization	Procurement activity
Construction of buildings and infrastructure		
1	Copenhagen Municipality, Denmark, 2011–2013	Use of old bricks in two building projects extending and renovating old schools.
2	City of Lahti and Tarpaper Recycling, Finland, 2015	Precommercial pilot platform for testing recycled asphalt and using roofing felt waste in road construction.
3	Helsinki, Finland, 2014	Recycled materials used in the construction of Ida Aalberg Park, Helsinki, including soil extracted from other construction sites.
4	Berlin, Germany, 2011	Concrete with recycled aggregate instead of gravel used in building construction.
5	Finnish Transport Agency, 2014	Use of recycled soil and ash in a pilot road construction project.
6	City of Hamburg, Germany, 2011	Recycled asphalt used to resurface the same road from which it was originally taken.
7	London, UK, 2012	Procurement of materials for the Olympic Park focused on responsible sourcing and use of secondary materials.
Water management and sewage systems		
8	Porvoo, Finland, 2014	Improved recycling and reuse of nutrients (i.e., phosphorus and nitrogen) in the treatment of sewage sludge and biowaste.
9	Helsinki region, Finland, 2016 onwards	Four to five pilots of new technologies for treating and utilizing digested sewage sludge and other biomass.
Vehicles and logistics		
10	Kalmar Länstrafik, Sweden, 2017	Criteria for public transportation that replaced fossil fuels with different types of biofuels.
11	City of Vaasa, Finland, 2014	Biogas buses powered by locally produced biogas based on a new business ecosystem and delivery network.
Waste management		
12	VA SYD, Sweden, 2017	Waste collection focused on “upstream work” to reduce environmental pollutants and waste at source.
13	Eastern Uusimaa, Porvoo, Finland, 2013	Replacement of a mixed waste bin with a waste bin with four lockers, one each for mixed waste, cardboard, paper, and glass and metal together.
Food and catering		
14	Pyhajarvi, Finland, 2014	New product using roach for fish streaks that was targeted at food services for both private and public consumers.
15	Sodankylä Municipality, Finland, 2012 onwards	Technological applications improving delivery logistics and food processing.
Furniture		
16	City of Helsinki, Finland, 2013	Rental rather than purchase of nursing beds designed that was easy to transport, fitted through small doorways and into lifts, and opened up into a normal use position in a few minutes, using its own motor.
17	Danish SKI, and Duba-B8, 2013	Contract language specifying that office furniture must be able to be disassembled into parts and have the potential to be reused several times.
Textiles		
18	Herning Municipality, Denmark, 2013–2015	Detailed guidance on the criteria for the reuse, repair, and disposal of working clothes.

4.5.5 Expected impact

- Positive impact to the short term demand and long-term development of recycling waste industry and market for recyclates.
- Stimulating innovation and investment in the circular economy.
- Increase in SMEs in the circular economy market.

4.6 Air Conditioning, Insulated Wires and Cables, Structured and Fabricated Metals

4.6.1 Definitions and Rationale

Air conditioning

The Middle East has experienced ever increasing demand for air conditioning systems primarily due to perennial hot climate, urban development, rising income levels and rapid infrastructure development, among other factors. The combined demand for air conditioning (A/C) systems in Oman rose from 217,000 units in 2012 to around 286,000 million units in 2017. Oman's A/C market is projected to reach USD 410 million by 2021.¹¹²

The Omani manufacturing capabilities in the air conditioning systems are limited to assembly in the residential sector and almost non-existent in the commercial sector. Primarily, the commercial sector extensively depends on imports of components. Thus, while the prospects for domestic manufacturing are bright and secure in this sector, domestic manufacturers find non-availability of basic raw material (flat steel products) and equipment (compressors, blowers and fans) locally as a major constraint in climbing up the value chain. Moreover, the market size is relatively small to achieve cost competitiveness through economies of scale. The domestic A/C manufacturing firms depend on cheap imports for most parts and equipment because the related and supporting firms like manufacturers of compressors, blowers, fans, copper tubes, flat steel products, heat exchangers, etc., are non-existent.

The UNIDO sectoral report suggests that the current tariff structure disincentivizes domestic value addition. A standard duty structure on all goods does not differentiate between finished imports and semi-finished imports to incentivize local production. In the absence of mandatory quality norms of A/C systems, the domestic market is flooded with cheap imports. Domestic manufacturers, to remain cost competitive, procure the cheapest available components to assemble the A/Cs for the retail market. Absence of standards allows seamless flow of inferior quality goods through the customs control and entry into the domestic market. Unspecified tonnage, power consumption, refrigerant quality, metallic quality, kilowatt hours, etc., is a major safety hazard for consumers.

Insulated Wires and Cables

Local producers in of electrical cables in Oman are using up-to date technologies in material handling, wire drawing and other manufacturing process. They produce globally accepted products using appropriate technology. The Prysmian Group, the largest cable manufacturer in the world, is the biggest shareholder in the Oman Cables Industry (OCI). Prysmian shares its technology, cable expertise, and access to markets with OCI. This helps OCI to have easier access to different markets, products, and technologies. It serves

¹¹² 6W Research (2018)

as a model for other manufacturing industries. The electrical cables make the large components of exports, peaking in 2014 for electrical cables and in 2015 for fibre optic cables.

The industry average Omanisation ratio has been maintained at 42%, above manufacturing sector norms of 35%. The industry has employed approximately 300 more employees in 2016 as against 2012, a CAGR of 7%. However, the higher Omanisation level is reported to have led to an increase in the overall cost of the manpower. To some extent, this affects their capability to compete in the international market even within the GCC against manufacturers from countries with a lower manpower cost.¹¹³

The UNIDO report indicated that fiber cables are expected in every home and business in the next 5 years. It offers an important opportunity for public purchasing, because the major consumers of electric wires and cables are met by public sector requirements. The share of local production in insulated wires and cables is 74% and even higher in optical fibre cables, around 89%. The high share of local production in consumption indicates that demand is majorly met by local manufacturers. This is because of preference given to local manufacturers. Cables not manufactured locally, such as specialty cables high voltage or renewable energy cables are imported.

Structured and Fabricated Metals

The Middle-East as a region has limited capacity in the production of crude steel from ore. In 2016, the total production output of crude steel in the region was around 62.33 MMT¹¹³. But regardless of how much steel is produced by a nation, if its manufacturing sector is broad-based and well diversified, it is likely to import steel from other steel producing nations. Oman has a medium-sized steel industry, which majorly uses iron scrap as raw material. Jindal Shadeed Iron and Steel LLC is the largest integrated steel plant in Oman which has the capacity of producing crude steel through DRI process.

Oman is a net importer of steel products but it has developed medium-sized production capabilities in semi-finished and finished steel products, mainly long products. A large majority of local steelmakers produces for domestic consumption. Few export to GCC countries but lately their share has shrunk due to price competitiveness. Jindal Shadeed is the sole steelmaker which is exporting unfinished and finished steel to international market. Currently, the total available production capacity in steelmaking is around 3 MMT¹¹³ per annum. However, none of the production facilities are operating at 100 per cent capacity utilisation.

The local manufacturing capabilities in flat products is non-existent and therefore most steelmaking units in Oman are into long products, essentially rods and bars. It is evident that the overall domestic capacities in steelmaking has experienced an increasing trend along with steel imports. Most steel imports are sourced from UAE, India and South Korea. In recent times, imports from Turkey and China are also gaining momentum. The potential threat in the form of price competitiveness is looming high against cheap imports from GCC countries, especially UAE. Demand for flat products are also growing but Oman is likely to remain a net importer in this category due to non-existent manufacturing capabilities presently.

As noted above, while the air conditioning and refrigeration systems sector is steadily growing globally, Oman extensively depends on imports of components in the residential sector and equipment imports in the commercial sector. One of the major reasons of high import content is the lack of production facilities in flat steel products. In air conditioning, except for electronic parts and compressors, rest of the components are manufactured out of flat products, which ranges from galvanised sheet vents to assembly housing and fins.

4.6.2 Deployment Measures

¹¹³ The UNIDO 2018 Manufacturing Report for Steel.

1. Stricter enforcement of local content requirements and SME subcontracting requirements: mandatory ICV plan and stronger penalties for non-compliance
2. Public procurement technical requirements based on International Electrotechnical Committee (IEC) / international standards.
3. Guaranteed purchase commitments based on international standards
4. Lot splitting to attract smaller SMEs following international harmonised safety and product standards - allowing for entry into global value chains and export markets
5. Joint bids to attract groups or cooperatives of SMEs and local community companies
6. Monitoring the implantation of the ICV development efforts of the major private sector players including the telecom service providers shall provide a better standing for the local manufacturer of air conditioners and fibre optic cables. The local players are unable to compete with low cost manufacturers from select countries with technical competency to supply product and services as per the requirement of the end user.
7. Role of Ithraa in providing market intelligence about potential export markets in collaboration with local manufacturers who scan potential markets and provide base level market intelligence for the private sector.

4.6.3 Potential costs

1. Higher costs of products in less competitive sectors: Limited domestic market and lack of international competitiveness
2. Some bottlenecks in supply chains, particularly in expanding sectors due to lack of available raw materials
3. Regulatory costs from establishing a harmonised, stable and globally recognised framework
4. Enforcement costs from ensuring safety considerations and domestic A/C manufactures conform to IEC standards and preventing sub-standard and cheap a/c components from entering channels of distribution in Oman, undercutting local market development.
5. Implementation and effective monitoring of ICV

4.6.4 International experiences

The Government of Jamaica has a policy¹¹⁴ to encourage the development of Jamaica's manufacturing industry. Procuring Entities are permitted to apply a margin of preference in Bid Evaluation, in favour of domestically manufactured goods, when these are competing with bids offering imported goods. A Domestic Margin of Preference is applied by first classifying bids according to whether the goods offered are locally manufactured or imported. After a determination is made as to the lowest priced bid in all the classes of bids, an amount of ten per cent (10%) is then added to the CIF or CIP prices of imported goods. The general principles which the Procuring Entity should be guided by when applying Domestic Margins of Preference in the evaluation of goods are:

- a) the goods being procured are "manufactured goods" involving assembly, fabrication, processing etc., where a commercially recognized final product is substantially different in the basic characteristics of its components and raw material;
- b) the goods offered by foreign and domestic Bidders are identical or compatible in respect of quality, size, capacity and performance;
- c) there is a qualified domestic bid which regardless of the nationality of the Bidder, has offered goods assembled or manufactured in Jamaica, which has domestic value in the manufacturing cost not less than 30 per cent of the ex-factory price of the product offered;
- d) a Domestic Margin of Preference is added to the CIF value of the foreign bids and not subtracted from the domestic bid. The nationality of the Bidder is immaterial, but the domestically manufactured goods

¹¹⁴ Government of Jamaica, Handbook Of Public Sector Procurement Procedures Volume 2 Of 4 Procedures For The Procurement Of Goods, General Services & Works, Revised 2014

offered in the bid shall meet the minimum domestic value-added criterion. Domestic value-added comprises domestic labour, the domestic content of material, domestic overheads and profits - from mining until final assembly.
e) Preferential treatment for national bidders - Low value contracts preference for national bidders - Section 23(4) of the Public Procurement Act 2015 provides that where the estimated value of procurement is lower than the procurement method threshold, a procuring entity may limit participation in open bidding procurement proceedings to national bidders.

Make in India: In September 2014, India's Prime Minister launched the 'Make in India' initiative as part of a wider set of initiatives devised to transform India into a global design and manufacturing hub.¹¹⁵ Its aim is to raise the contribution of the manufacturing sector to 25 per cent of GDP by 2020, expanding the sectors available for foreign direct investment. In 2012, the Department of Electronics and Information Technology (DEITY) launched a policy to provide Preference to Domestically Manufactured Electronic Products in Government Procurement (PMA)¹¹⁶.

The lowest quoted price will be termed as L1 and the rest of the bids are ranked in ascending order of price quoted, as L2 L3 L4 and so on. If L1 bid is of a domestic manufacturer, the said bidder will be awarded full value of the order. If L1 bid is not from a domestic manufacturer, the value of the order awarded to L1 bidder will be the balance of procurement value after reserving specified percentage of the total value of the order for the eligible domestic manufacturer. Thereafter the lowest bidder among the domestic manufacturers, whether L2, L3, L4 or higher, will be invited to match the L1 bid in order to secure the procurement value of the order earmarked for the domestic manufacturer. In case the first eligible bidder (i.e. domestic manufacturer) fails to match L1 bid, the bidder (i.e. domestic manufacturer) with next higher bid will be invited to match L1 bid and so on. However, the procuring agency may choose to divide the order amongst more than one successful bidder as long as all such bidders match L1 and the criteria for allocating the tender quantity amongst a number of successful bidders is clearly articulated in the tender document itself. In case all eligible domestic manufacturers fail to match the L1 bid, the actual bidder holding L1 bid will secure the order for full procurement value. Only those domestic manufacturers whose bids are within 20% of the L1 bid would be allowed an opportunity to match the L1 bid.¹¹⁷

Minimum Local Content Thresholds by sector in South Africa¹¹⁸

Industry/sector/sub-sector	Minimum threshold for local content
Buses (Bus Body)	80%
Textile, Clothing, Leather and Footwear	100%
Steel Power Pylons, Monopole Pylons, Steel Substation Structures, Powerline Hardware, Street Light Steel Poles, Steel Lattice Towers	100%
Canned / Processed Vegetables	80%
Pharmaceutical Products:	
• OSD Tender	• 70% (volumes)
• Family Planning Tender	• 50% value
Rail Rolling Stock	65%
Set Top Boxes (STB)	30%
Furniture Products:	
• Office Furniture	• 85%
• School Furniture	• 100%
• Base and Mattress	• 90%
Solar Water Heater Components	70%
Electrical and telecom cables	90%

¹¹⁵ India National Manufacturing Policy 2011 available at - http://dipp.nic.in/English/Policies/National_Manufacturing_Policy_25October2011.pdf

¹¹⁶ <http://meity.gov.in/esdm/pma>

¹¹⁷ <http://deity.gov.in/esdm/pma>

¹¹⁸ Department of Trade and Industry, RSA. http://www.thedti.gov.za/industrial_development/ip.jsp

Valves products and actuators	70%
Residential Electricity Meter:	
• Prepaid Electricity Meters	• 70%
• Post Paid Electricity Meters	• 70%
• SMART Meters	• 50%
Working Vessels/Boats (All types):	60%
• Components	• 10% - 100%
Conveyance Pipes	80% - 100%
Transformers and Shunt Reactors:	
• Class 0	• 90%
• Class 1	• 70%
• Class 2	• 70%
• Class 3	• 45%
• Class 4	• 10%
• Components and conversion activities	• 50% - 100%
Solar PV Components:	
• Laminated PV Modules	• 15%
• Module Frame	• 65%
• DC Combiner Boxes	• 65%
• Mounting Structure	• 90%
• Inverter	• 40%
Two Way Radio Terminals and Associated Equipment:	
• Portable Radio	• 60%
• Mobile Radio	• 60%
• Repeater	• 60%
• Components	• 20% - 100%
Rail Signaling:	• 65%
• Components	• 40% - 100%
Wheelie bins:	100%
Fire Fighting Vehicle	30%
• Crew Cabin	• 100%
• Super Structure	• 100%
• Assembly	• 100%
Steel Products and Component for Construction	
Steel Value-added Products	
• Fabricated Structural Steel	• 100%
• Joining/Connecting Components	• 100%
• Frames	• 100%
• Roof and Cladding	• 100%
• Fasteners	• 100%
• Wire Products	• 100%
• Ducting and Structural pipework	• 100%
• Gutters, downpipes & lauders	• 100%
Steel Value-added Products	
• Plates	• 100%
• Sheets	• 100%
• Galvanised and Colour Coated Coils	• 100%
• Wire Rod and Drawn Wire	• 100%
• Sections	• 100%
• Reinforcing bars	• 100%

4.6.5 Expected impact

Higher costs and some supply side challenges in the short term. In the medium to long term, if flanked by conducive macro-economic and social policies, a more stable and expanding domestic market for attracting

further investment and expansion of the a/c and insulated wire and cable sector, based on recognized international standards and brand recognition. However, there should be concerted efforts especially from ICV development point of view for potential growth of the fabricated metal products. With careful monitoring and evaluation, support from the government in ICV development could help the private sector to ensure sustained growth in this sector.

Chapter 5: Public Procurement regulations for industrial innovation

5.1 Definitions and Rationale

Innovation is generally considered an essential component of economic growth and development.¹¹⁹ Innovation can be defined as ‘the implementation of a new or significantly improved product (good or service), or process, a new marketing method, or a new organizational method in business practices, workplace organization or external relations’.¹²⁰ By decreasing the necessary inputs or costs of a given quantity of production, allowing the development of new and superior products, and creating markets which did not exist previously, innovation is the foundation of long-term economic growth.¹²¹ It is common, therefore, for governments to develop policies that they believe will favour innovation.

Public procurement of innovation is commonly referred to as the procurement of pre-commercial goods and services, that is, those that have not yet significantly appeared on the market.¹²² It may be either general or specific: there may be a general policy of the government giving preference to tenders or suppliers able to demonstrate innovation in their product, such as reducing the weighted ‘cost’ of a product in a competitive tender by a specified amount to reflect innovative technology. Alternatively, a specific effort to bring about the development of a product or market, such as smart technologies that reduce power consumption during peak hours.¹²³

Figure 12, below, illustrates the general adoption patterns for many innovative products. After discovery by a small minority of consumers (or producers) an innovative product, process or service will, if successful, begin a process of wider diffusion. By putting the governments’ substantial financial pull behind technologies at the innovation or early adoption stages, the government may be able to push an innovative product further along the path of adoption within the private market.

Figure 12: Adopters across product lifecycle.¹²⁴



Public procurement is often viewed as a key driver for innovation particularly in the manufacturing and construction industries and generally in relation to the achievement of sustainable development. Different industrial strategy policy objectives for promoting innovation emerge depending on the type of

¹¹⁹ Rosenberg, *Innovation And Economic Growth*, OECD (2004).

¹²⁰ OECD/Eurostat, *Oslo Manual*, p. 46 (2005).

¹²¹ *Ibid.*

¹²² See National IST Research Directors Forum Working Group on Public Procurement, *Pre-Commercial Procurement of Innovation*, p. 17 (2006).

¹²³ Fraunhofer Institute, Innovation and Public Procurement. Study for the European Commission (No ENTR/03/24) (2005) p. 15.

¹²⁴ Rogers, E. M., *Diffusion of Innovations*, New York: Free Press, p. 5 (2003).

procurement a government undertakes. The literature indicates that there are three main varieties of public procurement relevant to promoting innovation and industrial strategies:

- Direct procurement refers to situations where a government agency or representative makes purchases for use by that body, and where the need for the product is largely confined to the public. Much of the procurement carried out by national defense agencies, such as the procurement of military vehicles and hardware, would fall into the category of direct procurement.
- Co-operative procurement corresponds to situations where the public entity makes purchases of innovations also sought after by segments of the private sector. An example of such purchases would be government vehicles using alternative fuels or drive systems, where it is foreseeable that there could also be a private market for these goods. In such a situation, it is possible that public procurement of a product that may be innovative could also spur demand and adoption in the private market, leading to a greater diffusion of this technology
- Catalytic procurement refers to situations where the ultimate users of the technology will be private industry or consumers, and the state merely promotes the development of this innovation financially, such as might be the case for innovative kitchen appliances. Here, the government may have identified an un-serviced niche in the market and sought to bring about the development of superior technologies to pursue certain policies, like greater home energy efficiency.

Military procurement has often been used to stimulate innovation. Disruptive-innovation funding has been driven by the US experience of the Defense Advanced Research Projects Agency (DARPA), which contributed significantly towards many technologies embedded in computers and smartphones, including microchips, GPS, voice recognition technologies and the internet itself. The success of DARPA not only relates to the overall US economic ecosystem, which strongly favours innovation, but also to its capability in translating disruptive innovations into marketable products – also through public procurement. Creating the conditions for making innovative products marketable – also through public purchase of goods and services – can be more important than public funding itself. In both US and China, the bulk of investments for innovation comes from the private sector.

Utilising government procurement to develop new technological capabilities and solutions, is categorized as a demand-side policy measure because governments generate new markets for companies.¹²⁵ In addition to the routine procurement of ‘off-the-shelf’ products, a government procurement can purchase an order for a service, a good or a system that does not yet exist, but which could be developed within a reasonable period of time, based on additional or new innovative work by the contractor.¹²⁶ Through demand-side procurement policies, governments also seek to diversify an economy or address emerging economic and social challenges. Kattel and Lember identify direct public procurement for innovation as a possibility that can be used to affect the technology life cycle/circular economy, promote clusters and innovation systems, and thereby increase urban, regional and national competitiveness. In addition, the role of the public sector could be seen as a facilitator of innovation processes especially in the fluid phase of technology development because both social and economic benefits for the region and/or nation state might follow.¹²⁷

There are complementary measures to public procurement for innovation. For example, Public Private Partnerships (PPPs) are collaborative agreements between public entities, private businesses or investors, and sometimes also non-profit partners such as community based organizations, representing particular stakeholders affected by the project. Oman has recently enacted a Decree on PPPs to allow for funding

¹²⁵ Jakob Edler and Luke Georghiou *Public procurement and innovation—Resurrecting the demand side*. Research Policy. 2007, vol. 36, issue 7, 949-963

¹²⁶ Charles Edquist, Leif Hommen, Lena Tspouri. *Public Technology Procurement and Innovation Theory* 2000. Publisher: Springer, 5

¹²⁷ Lember, Veiko, Kattel, Rainer, Kalvet, Tarmo (Eds.) *Public Procurement, Innovation and Policy International Perspectives*. 2014. Springer.

new infrastructure projects when neither the government nor the private sector can complete the task alone. Using PPPs to develop infrastructure gives Oman the opportunity to move large upfront capital spending off their near term financing commitments. Costs are spread across decades through a payment to a private sector company which has taken on the ownership, construction and financing of the project. In addition to driving some element of competition into public services, it also has the potential to encourage knowledge transfer between some of the most sophisticated international private sector firms and the Omani Government.

PPP schemes can play a role in promoting Oman's economic diversification and attracting investment. PPPs can create a mutually beneficial platform where the public sector gets a service provided to it by an efficient and experienced operator, which in turn gets a long-term and stable source of revenue that can act as a base for expansion.¹²⁸ PPPs have also provided a principal vehicle for foreign direct investment (FDI) into public utilities and infrastructure in developing countries, with OECD-based multinational enterprises participating in most of the largest PPPs in this area.¹²⁹

However, the contractual terms of PPPs must be carefully scrutinized. There are two distinct types of PPP. The first is a demand risk partnership. Here, for example, the public body gives the innovation company a franchise to build a smart-technology road or some other infrastructure. The company is allowed to collect tolls or other revenues for a fixed period of time, usually three or four decades, after which ownership and management of the infrastructure is turned back over to the public partner. The key is that private partner accepts all of the risk that the revenues may not cover the costs.

More caution should be attached to the second type of PPP: an availability payment partnership. As with the first type, the public body designs the project and the innovation company builds and, usually, operates it. However, the private partner takes no risk that the project might not pay its way. Instead, the public partner contracts to pay the private partner enough money over several decades to completely repay the private partner's costs regardless of the use of the infrastructure. This might be appropriate only for infrastructure without the expectation of user fees, such as public schools. But experiences in the EU indicate that availability payment partnerships are formed mainly to allow the public partner to sidestep legal debt limits so that the debts appear on the books of the private partners, not the government.

5.2 Deployment

The ways that governments can support innovations through public procurement, include:

1. Tender specifications and performance requirements encouraging the diffusion and adaptation of 'leading edge' technology
2. Request for proposals include desirability of products and systems that go beyond the state-of-the-art – pre-commercial – including the use of defense procurement.
 - the creation of demand “pull” by expressing its needs to the industry in functional or performance terms;
 - the provision of a testing ground for innovative products
3. Guaranteed purchasing commitments: using public procurement to encourage innovation as an early adopter and market leader demanding new technologies/solutions

¹²⁸ PWC Adopting PPP and its role in attracting FDI in Dubai.

file://smbhome.uscs.susx.ac.uk/kd263/Desktop/adopting-ppp-and-its-role-in-attracting-fdi-dubai.pdf

¹²⁹ DAF/INV/WP(2004)4/ANN4

The OECD has developed a framework to support the use of public procurement for innovation:¹³⁰

- Embed policy strategies with defined targets within any national, sub-national and regional innovation policy.
- Set up a legal framework, including understandable definitions, guidelines and templates to facilitate its implementation.
- Promote professionalisation by providing specific training to build staff capabilities and skills, setting up multidisciplinary teams and competence centers focused on public procurement for innovation.
- Raise awareness by publishing good practice cases, creating a dedicated knowledge-sharing platform and/or hosting workshops and seminars to share and build success.
- Undertake risk management and measure impact to reduce possible loss and damage, and increase trust.
- Define test standards, methods and quality certificates, using standardisation as a catalyst for innovation.
- Use appropriate e-procurement and information technology (IT) tools to carry out a proper risk assessment to measure impact.

5.3 Potential costs

Using public procurement to promote innovation is a costly and time-consuming effort. When the payoff is unclear, the innovative solution can be the more expensive solution.¹³¹ It takes a long time before a government develops proper procurement innovation related policy and administrative capacities across the public sector. It also requires on-going financial support.

Procurement for innovation demands strong coordination between stakeholders and constant evaluation and learning. Interagency coordination with the intellectual-property-rights (IPR) policy is required to determine whether Oman is able to innovate using specific existing technologies and whether it can develop IPR policies under TRIPS, which are designed to its needs.

Coordination and evaluation involve transaction costs, which have to be taken into account when implementing the process. But without them there exists the potential for expensive coordination failure.¹³²

Public procurement promoting innovation in Oman must also be concerned with competitive advantage and a diversified economy. This suggests emphasis on policy-learning and the use of technology. However, here the competition effect is highly dependent on the existing market competitiveness, which may not always be the case in Oman.

¹³⁰ The OECD website for Public Procurement for Innovation: <http://www.oecd.org/gov/public-procurement/publications/public-procurement-for-innovation-9789264265820-en.htm>

¹³¹ Jakob Edler and Luke Georghiou *Public procurement and innovation—Resurrecting the demand side*. Research Policy. 2007, vol. 36, issue 7, 949-963

¹³² Aschhoff, B., Sofka, W., 2009. Innovation on demand—Can public procurement drive market success of innovations. Research Policy, 38 (8): 1235–1247;

5.4 International Experience

Despite the general interest in the public procurement of innovation, cost-benefit analyses are also scarce, or it is too premature to make impact assessments. One overview of the research concluded that all evaluations reviewed are seen as falling short of providing a rigorous and transparent assessment of policy impacts.¹³³ Data availability constitutes a major hurdle in assessing impact. Procurement data is fragmented and unreliable, allowing limited comparability across countries, and consequently the share of innovative procurement is difficult to estimate.¹³⁴

Figure 13: Case studies

East Asian economies during the 1980/90s as follows:

1. Policy measures were aimed at a specific product not produced in the given country or done so on a very weak level (from radios to semiconductors)
2. Government agencies were actively seeking technology transfer from abroad (usually licensing technology)
3. Government also provided investment either through direct subsidies, preferential interest rates or public sector lending, at the same time directly controlling or prohibiting foreign direct investments
4. Most targeted products had a local contents requirement for their production
5. Investment coordination of downstream supplier activities;
6. Such measures included either sunset clauses (government support lasted for a specific number of years) or domestic competitive pressures (multiple companies were given similar support) or both;
7. Switching from domestic to export markets occurred when domestic producers reached certain previously set quality standards

Box 1.3. Build in Canada Innovation Programme (BCIP, 2010-12)

With the collaborative efforts of multiple government organisations and industry partners, the BCIP helps innovators bridge the pre-commercialisation gap by helping them move their innovations from the lab to the marketplace through testing in operational environments across government. The BCIP awards contracts to entrepreneurs with pre-commercial innovations through an open, transparent, competitive and fair procurement process for products to be tested within the Canadian federal government.

The programme facilitates testing opportunities within the federal government with testing departments being required to provide feedback to entrepreneurs on the performance of their goods or services. In doing so, the BCIP provides innovators with the opportunity to enter the marketplace with a successful application of their new goods and services. With the help of the Office of Small and Medium Enterprise's network of Public Works and Government Services Canada, the BCIP also provides information on how to do business with the government of Canada.

Source: (OECD, 2017^[15]).

5.5 Expected impact

Using public procurement contracts to promote innovation is challenging. One methodological issue common to all discussions on the impact of preferential procurement policies, is that isolating or delineating

¹³³ Aschhoff, B., Sofka, W., 2009. Innovation on demand—Can public procurement drive market success of innovations. *Research Policy*, 38 (8): 1235–1247;

¹³⁴ Elvira Uyarra Review of Measures in Support of Public Procurement of Innovation. Nesta Working Paper No. 13/17. www.nesta.org.uk/sites/default/files/working_paper_-_review_of_measures_in_support_of_public_procurement_of_innovation.pdf

the specific intervention to differentiate it from other demand side and even supply side measures is complex. Innovation outcomes may only be evident after some time following the intervention, after certain impacts materialize. Some initiatives oriented to stimulate innovation through procurement often do not go beyond statements of intent and guidelines containing aspirations to support innovation procurement, without concrete implementation, let alone monitoring and evaluation mechanisms.

Nevertheless, success requires some centralization in purchasing combined around basic long-term and clearly articulated user needs, with an appropriate structure of contract specifications. This may require moving instead towards a system of international consortia for big projects, along with using public procurement regulation to promote a wide range of small- and medium-size contractors capable of handling smaller projects, see Chapter 6.

Chapter 6: Public Procurement regulations for SMEs

6.1 Definitions and Rationale

Micro, small and medium-Sized Enterprises (MSMEs)¹³⁵ overall constitute the overwhelming majority of all enterprises in both developed and developing countries, see Figure 14, and are therefore seen to be the engine of an economy.

Figure 14 Share of micro, small and medium-sized firms in total number of small businesses (%)¹³⁶

	% of micro firms	% of small firms	% of medium sized firms
Developed	87.1	10.7	2.2
Developing	80.5	15.5	3.9
- G20 developing	82.1	13.2	4.7
- Other developing	80.5	14.9	4.5
- LDCs	78.5	20.7	0.5
Total	82.9	13.8	3.3

The MOCI 2016 definitions of MSMEs in Oman are as follows:¹³⁷

- a micro enterprise has 1-5 workers and annual sales of less than OMR100,000;
- a small enterprise has 6-25 workers and annual sales of OMR100,000-500,000;
- a medium enterprise has 26-99 workers and annual sales of OMR500,000-less than 3,000,000.

The current system also classifies companies into seven categories, namely: consultancy, international, excellent, grade 1, grade 2, grade 3 and grade 4, based on the nature of the company or the size of its capital.

Article 36 of the Oman Tender law 36/2008 states that ‘*Priority in bids shall be given to national products of small and medium industries that meet the conditions and specifications. The priority shall include priority in prices in the range of a 10% increase*’.

Riyada was established as the Public Authority for Small & Medium Enterprises Development as per Royal Decree No. 36/2013. Riyada’s purpose is to develop small and medium enterprises, and instill a culture of entrepreneurship and self-employment among emerging and young people. Riyada undertakes over 1,500 feasibility studies per year. Riyada’s services are limited to Omani citizens. Riyada has provided training to 1,500 SME = 15%. In 2020 Riyada will offer a training programme for government tendering.

The field interview with Riyada indicated that:

- In 2018 – 42,000 SMEs are registered with Riyada out of 100,000 total.

¹³⁵ There are varying definitions of SMEs: OECD/UNIDO (2004) note that SMEs are defined in the literature most commonly by reference to employment, due to the simplicity of the measure and the ease of collection of data (the OECD and US generally use a measure of under 500 employees, the EU 250).

¹³⁶ IFC’s small business Country Indicators. Country Groups defined in Appendix Table 8.1 of WTO (2014).

¹³⁷ The decision to revise the classification of SMEs is based on the Royal Decree No 36/2013 on the establishment of the Public Authority for Development of SMEs (riyada) and riyada board of directors and on the decision of riyada board of directors at its third meeting held on October 6, 2015.

<https://timesofoman.com/article/75668/Business/New-SME-classification-will-improve-coordination>

- The definition of SMEs that the Tender Board uses is different from Private sector and this should be harmonised.
- From the perspective of SMEs, it would be better to have a centralised model of procurement through Tender Board and 1 law rather 27 laws followed by different Ministries and state agencies
- Removing bid bond for SMEs could be helpful
- Free documents for Grade 4 SMEs important
- Lot splitting & Joint bids: Positive for SMEs
- Although large companies offer SMEs 10 % sub contracting there are many layers of subcontracting so the profits for SMEs are often low
- Fronting problem: Larger contractors with SME subcontracting obligations instruct the SMEs to stay at home so that larger companies fulfil their tendering requirements without using the SMEs or developing their skills
- SMEs experience problems in payment delays
- The ESNAD E-tendering website needs improvement:
 - problems uploading documents around the deadlines
- Riyadh's relationship with the Tender board works on a case by case basis.
- There is no significant perception of corruption from SMEs, just lack of trust that they will win a contract.
- Monitoring and evaluation
 - ICV companies monitoring and enforcement
 - Other companies – preferred suppliers list
- The Riyadh registration fee is low: *Riyada card 5 OM*
 - *With Tender Board - free for Grade 4*
- The SME registration take up on the Oil and gas business gateway is low

The field interviews also suggested that SEZAD followed best practice, comprehensively promoting MSMEs through:

- d) the 10% price preferences for SME bids
- e) the 10% subcontracting to an SME policy
- f) the 10% contracting to an SME

SEZAD maintains a database of Omani SMEs categorized by sector, which it uses to help contractors identify suitable SMEs for subcontracting. It is not known if this draws upon the Riyadh database containing over 42,000 registered Omani SMEs. SEZAD also employs a system of paying SMEs invoices directly to avoid delayed payments through contractors. This enables SMEs to be paid within 30 days of invoice. There are also penalties for non-compliance with Omanisation requirements that amount to up to 10% of the contract value.

Despite these efforts, Omani SMEs' share of the public procurement market is below their proportion of total enterprises.¹³⁸ Various reasons account for the relatively low levels of SME participation in bidding for public procurement contracts. They include:

- Lack of information / transparency. SMEs have fewer resources to spend seeking out new tenders to bid for than large and incumbent firms.
- Bidding firms incur threshold administrative or 'fixed' costs disproportionately affecting SMEs¹³⁹
- Onerous supplier and contractor registration requirements

¹³⁸ Ibid.

¹³⁹ A 2010 study concluded that, in the United States (US), costs per employee due to regulation appear to be at least 36% higher in small firms than in medium size and large firms, a disproportion in compliance costs that is particularly true in the manufacturing sector.

- Detailed bid information and documentary requirements
- Costs of supplying a performance bond or guarantee
- Costs of inspection requirements during bidding
- Protracted bid qualification, evaluation and award procedures
- lengthy payment intervals after contract award require interim cash flows
- complex contract dispute resolution procedures
- government procurers are risk averse when dealing with SMEs¹⁴⁰
- untrained or poorly trained workforces
- inadequate accountability for government decisions

Figure 15 Small Business Specific Assistance Policies¹⁴¹

Types of Support	Stage of Support	Objective of Support
Training and technical assistance	Preparation stage & supplier eligibility; bidding process and bid submission	Providing a range of services to small businesses to enable their better participation in procurement processes
Financial assistance	Preparation stage & supplier eligibility; bidding process and bid submission; institutional procedures; post award & execution	Providing access to capital &/or advanced payments
Performance guarantee flexibility	Preparation stage & supplier eligibility; bidding process and bid submission; institutional procedures; post award & execution	Reforming requirements of performance guarantees to reduce difficulties for small businesses
Framework agreement for small businesses	Preparation stage & supplier eligibility; bidding process and bid submission	Use of predetermined agreements to facilitate continued and more engagement by small businesses
Subcontracting requirement of small business consortia formation	Preparation stage & supplier eligibility; bidding process and bid submission;	Promote small business engagement even when the size of the contract is not suitable for a single small business to pursue
Smaller lot sizes	Preparation stage & supplier eligibility	Splitting contract sizes into smaller sizes to allow more small businesses to bid
Award criteria	Bid opening & evaluation; preparation stage & eligibility of suppliers	Providing opportunities for small businesses to improve their bid based on characteristics of their firm/work
Set asides	Preparation stage & eligibility of suppliers	A designated portion of the procurement budget reserved for small businesses
Contract thresholds and reserved products	Preparation stage & supplier eligibility	Either contract sizes or specific products are reserved for small businesses to bid on
Bid price preferences	Bid opening & evaluation	Discounting bids by small businesses to make them more competitive with larger firms

¹⁴⁰ Government procurers may specify more stringent financial or experience requirements that exclude newer and financially weaker SMEs. Through application of such qualification criteria, procurers also reduce work for themselves by not having to evaluate a larger number of bids from SMEs.

¹⁴¹ World Bank Group Technical Report: Policies that Promote small business Participation in Public Procurement. The Business Environment Working Group (BEWG) of the Donor Committee for Enterprise Development (DCED). 2017.

6.2 Deployment

Simplified contract awards process

The technical, financial and administrative costs required to develop a competitive bid for a government contract can easily result in an advantage for large businesses over smaller ones. Upfront cost-related barriers such as registration requirements can be minimised, through measures such as a Single Procurement Document, based on self-declarations. Only in the event of winning does a bidder need to provide the original documentation. It is estimated that this could reduce administrative burden on companies by over 80%.¹⁴² Streamlining the bidding documentation and information, particularly for small bids, can help to further reduce transaction costs, while waiving or reducing registration costs for small businesses will also serve to increase participation.

Article forty-three contains a requirement for all bidders to provide security equivalent to 1% of the total value of the bid with their tender. The Board keep the security where bids are withdrawn and only refund the security to unaccepted bidders at the end of the bids' validity period (a minimum of 60 days under Article 20). One percent of the contract value could be a deterrent to submission of bids by some MSMEs, taking into consideration that they would lose access to these funds for 90 (or 100?? Days).

It is highly recommended that this requirement is removed for SMEs subject to a certain cap on the contract value. For example, this provision could apply only to contracts exceeding OMR 250, 000. Cash flow is a significant issue for many SMEs and any provisions or schemes reducing delays in payments or cash flow will be good for smaller businesses. Due diligence is an important part of contract evaluation and removal of a deposit requirement *before* award in no way obviates the need to ensure that bidders have the capability, capacity, and experience to effectively discharge any contractual obligations.

As a counterbalance to the potential removal of a one-percent deposit for SMEs. If not already part of the tendering procedure, all potential bidders should provide evidence of their ability to provide a guarantee (for example, in the form of written confirmation from their bank) or of any professional indemnity policies on submission of their bid.

Under Tender Law 2008 SMEs benefit from a bid price preference scheme. Bids from eligible small businesses are given a margin of preference and, if the lowest evaluated bidder is a small business, it is awarded the contract.

It is recommended that decision of 20/2010 to determine the price of copies, conditions, and specifications of tenders and registration and classification fees of companies and institutions at the Tender Board should be revised. Some recommended changes include:

- a. Exempt SMEs from bidding fees
- b. Exempt SMEs from registration fees
- c. Exempt SMEs from tender documentation fees
- d. Make the registration process simple and easy for SMEs
- e. Ensure that tenders up to 250 thousand Omani riyals compete within SMEs only

In the tender bid documentation, companies must provide an ICV plan with a list of purchases for local products and a list of SME companies that have been assigned to be approved in the tender. This will help

¹⁴² World Bank Group Technical Report: Policies that Promote small business Participation in Public Procurement. The Business Environment Working Group (BEWG) of the Donor Committee for Enterprise Development (DCED). 2017.

to ensure purchases of local products and assignment of the SME companies and to fight fraud and corruption in the application of the ICV plan.

Enforcement and Penalties: Omani legislators should establish a mechanism for implementation of all tender rules as well as effective penalties in cases where the awarded bidders do not use national products or support SME companies.

Increasing Transparency

Promoting transparency promotes competition by ensuring that potential suppliers are aware of the procedures and specific calls for tender. It can also help to ensure the integrity of the procurement process and contribute to an opening of the procurement market. Transparency further encourages *indirect* supply since foreign investors are much more likely to invest in local facilities if they have knowledge of the procurement conditions.

The use of digital technology, including block chain, in the public sector is a driver of efficiency and supports the effectiveness of policies by enabling more open, transparent, innovative, participatory and trustworthy procurement system. The use of e-procurement not only increases efficiency by facilitating access to public tenders, thereby increasing competition and decreasing administrative burdens, but can also improve transparency by holding public authorities more accountable.

Advance and prompt payments to qualifying small businesses

Ensuring prompt payment is a basic requirement to ensure that small businesses do not suffer from resource constraints and being pushed into bankruptcy, which deter further small business involvement in government contracts. Within sub-contracting, small businesses are the first group negatively impacted by a delay in payment to the lead contractor.¹⁴³ Prompt payment reforms work to limit the amount of time needed to receive payment as well as ensure that payments are made on time without delays.

Payment reform can take place through:

- simplifying the documents necessary for making payments, including simplified controls
- providing advanced payments to qualifying small businesses. For example, in North Macedonia, procurers can give advance payments of up to 20% of the total value of the contract, although this is not mandatory.
- Requiring the procuring entity to pay penalties to suppliers. One study found that in about two-thirds of economies surveyed, procuring entities must pay a penalty to the supplier. Additionally, in Canada a supplier will automatically receive interest on overdue accounts.¹⁴⁴

Small business supporting financial loan schemes

The Omani government can offer financial assistance to SMEs in different forms including access to capital offered by governments. Governments can provide unique financing opportunities specific to small businesses seeking to bid for contracts, to help them access capital they might otherwise struggle to receive. Lower interest loans are a frequently used tool – providing low cost financing opportunities that would otherwise not be available in the private market. ¹⁴⁵ Finance assistance is particularly important in light of documented widespread delays in payment to small businesses.

¹⁴³ World Bank Group Technical Report: Policies that Promote small business Participation in Public Procurement. The Business Environment Working Group (BEWG) of the Donor Committee for Enterprise Development (DCED). 2017.

¹⁴⁴ World Bank Benchmarking Public Procurement 2016 Report.

¹⁴⁵ World Bank Group Technical Report: Policies that Promote small business Participation in Public Procurement. The Business Environment Working Group (BEWG) of the Donor Committee for Enterprise Development (DCED). 2017.

- *SME Leader Status*

The Omani government could implement an SME Leader schemes to recommend SMEs that meet the specific criteria to partner banking institutions for low cost financing opportunities. As a visible statement of financial health, the small businesses can also use the SME Leader logo in their corporate communications, which boosts their competitiveness.

The SME Leader scheme could stipulate that the status is only obtained if the company meets the certain requirements, such as:

- it is a small business according to domestic legislation, as proven by online certification, which must be renewed annually;
- it has no debts to the Tax Office, Social Security or other government bodies
- it has a specific focus on pursuing growth and competitiveness strategies;
- it has a risk profile that meets the standards of the different banks' internal systems for credit ratings

In addition to the credit rating profile, the company should also meet conditions including:

- (i) positive financial outcome in period under review
- (ii) earnings before interest, taxes, depreciation, and amortization positive in the two years under review;
- (iii) a minimum percentage of equity in assets in period under review – e.g. 30%
- (iv) a minimum turnover in period under review –
- (v) a minimum number of employees (e.g. 5 full time) as an autonomous company, in period under review

Capacity building and awareness raising

Independent of the actual tendering process or in tandem, the Omani government could provide Riyada with further resources to provide more technical assistance and training services specific to small businesses interested in participating in the procurement process. This should include outreach, managerial training, financial management, understanding the public procurement process, access contract opportunities, etc. This support can be provided independent of the actual tendering process or in tandem.

Oman could also reinforce a competition approach to public procurement by establishing a memorandum of understanding between the Tender Board and the Competition and Monopolies Prevention Centre to share market information and discuss potential cases of bid rigging or abuse of dominance relevant to tendering. This can increase small business participation in public procurement contracts, due to increased enforcement and legal certainty. Competition laws address cartels or bid rigging, and can also be applicable to public procurement bodies when they are undertaking an economic activity. A more transparent, coherent and competitive framework for potential bidders would particularly benefit smaller companies wishing to enter the lucrative procurement market. It is good practice to ensure that bidders sign a non-collusive tendering certificate to certify that they have not been involved in any collusion with other bidders to, for example, allocate bids by agreeing tender prices between themselves.

Framework Agreements and Contracts

Oman does not yet use framework agreements to set out the terms and conditions governing contracts with suppliers who are appointed to the framework during the life of the agreement. There are various ways in which they may be set up, for example, whether the suppliers are guaranteed any work under the agreement or not and how such work is allocated. Frameworks may be used for specific purchases (call-offs) during the term of the agreement. Frameworks are generally used for a generic groups of goods, works or services (or a combination thereof). Goods procured can range from office supplies to vehicle parts, for example; service frameworks could include financial and legal services, design or management consultancy services and works can include for example, road maintenance or construction works.

There is normally one 'framework' for each type of procurement, but framework agreements frequently appoint more than one supplier. The advantages of multi-providers are manifold. One of the main benefits is that they spread the risk of the procurement. Dividing work amongst contractors, helps to ensure a flexible and smoother supply of goods or services. Frameworks can also work particularly well with SMEs. SMEs may lack the capacity and flexibility of larger companies to accommodate large scale call offs, particularly where there is a limited lead in time, therefore, distributing the procurement between contractors can assist with supply logistics whilst achieving policy objectives of promoting SMEs. Single provider framework agreement may also be advantageous where works, goods or services are needed over a period of time to achieve the most advantageous price by fixing the agreed terms at the outset of the contract without committing to exact quantities or levels of service required.

6.3 Potential costs

Figure 16: Types of support measures and costs to the public and private sector

Types of Support	Objective of Support	Costs
Training and technical assistance	Providing a range of services to small businesses to enable their better participation in procurement processes	Government
Financial assistance, including SME Leader Scheme	Providing access to capital &/or advanced payments	Government Private financial institutions Partner Banks in SME Leader
Performance guarantee flexibility	Reforming requirements of performance guarantees to reduce difficulties for small businesses	Administrative costs
Framework agreement for small businesses	Use of predetermined agreements to facilitate continued and more engagement by small businesses	Administrative costs
Subcontracting requirement of small business consortia formation	Promote small business engagement even when the size of the contract is not suitable for a single small business to pursue	Administrative costs Efficiency and economies of scale costs
Smaller lot sizes	Splitting contract sizes into smaller sizes to allow more small businesses to bid	Administrative costs Economies of scale costs
Award criteria	Providing opportunities for small businesses to improve their bid based on characteristics of their firm/work	Administrative Value for money costs
Offsets/Set asides	A designated portion of the procurement budget reserved for small businesses	Administrative Value for money costs
Contract thresholds and reserved products	Either contract sizes or specific products are reserved for small businesses to bid on	Administrative Value for money costs
Bid price preferences	Discounting bids by small businesses to make them more competitive with larger firms	Administrative Value for money costs

While of benefit to SMEs, the spread of IT in procurement is not without challenges. The challenges for both potential bidders and procurement agencies that are relevant for Oman include both low ICT skills and low knowledge of the economic opportunities raised by the tool. The Omani procurement agencies

need sufficient resources to reform a traditionally low innovative organizational culture through continuous IT training and professionalized career development. Potential bidders also face often difficulties understanding or applying the procedure and difficulties when using the functionalities.

6.4 International Experiences

Figure 17: Automated SME lot division tool in Germany

Procurement practitioners often find it difficult to reconcile the competing priorities of aggregating spend in order to generate cost savings, and developing tenders that are accessible for SMEs. A common approach for supporting SME participation in public procurement in OECD countries is to divide contracts into lots (carried out in 60% of countries). However, dividing contracts in a fair and proportionate way can be a challenging activity that must be tailored for each industry. Incorrectly dividing contracts can have a negative impact on an industry, adversely affecting both SMEs and large organisations.

To assist procurement practitioners, the federal government in Germany partnered with a consultancy firm to develop a tool that uses complex algorithms to support decision making. The tool collects relevant information on the procurement in question, taking into account the specificities of the industry. The tool then generates a suggested split of the contract.

The tool can be applied to all major industries that are relevant for public procurement, and can be further developed to include additional sectors if required. There is limited feedback on the success of the tool to date given it was only recently launched, but the government will continue to monitor its progress.

Source: Information provided by Federal Ministry of Economics and Technology (*Bundesministerium für Wirtschaft und Energie – BMWi*); (OECD, 2019[25]).

Figure 18 Main challenges to the SME use of e-procurement systems, 2014

	Low knowledge/ ICT skills	Low knowledge of the economic opportunities raised by this tool	Low innovative organizational culture	Difficulties to understand or apply the procedure	Difficulties in the use of functionalities	Do not know
Australia	○	○	○	○	○	X
Austria	X	X	X	X	X	+
Belgium	○	○	+	○	○	X
Canada	+	●	●	●	●	X
Chile	○	●	○	●	●	+
Denmark	○	○	○	●	●	+
Estonia	○	+	○	○	○	X
Finland	X	X	X	X	X	+
France	X	X	X	X	X	+
Germany	+	+	+	○	●	X
Greece	●	+	+	○	○	X
Hungary	+	○	+	●	●	X
Iceland	X	X	X	X	X	+
Ireland	○	○	○	●	○	+
Italy	+	○	+	●	●	X
Japan	+	+	○	●	●	X
Korea	+	○	+	○	○	X
Luxembourg	X	X	X	X	X	+
Mexico	+	+	+	○	○	●
Netherlands	+	+	○	●	●	X
New Zealand	+	+	○	○	○	X
Norway	○	+	●	●	○	X
Poland	+	○	+	●	●	X
Portugal	+	○	○	●	○	X
Slovak Republic	●	+	○	○	●	X
Slovenia	+	+	+	●	●	X
Spain	●	+	+	○	○	X
Sweden	X	X	X	X	X	+
Switzerland	X	X	X	X	X	+
Turkey	○	○	+	○	○	X
United Kingdom	+	●	+	○	●	X
United States	+	○	+	●	●	X
OECD total						
✦ Procuring entities	14	11	13	X	X	10
● Potential bidders/suppliers	14	12	10	13	13	8
○ Not a major challenge	8	11	10	12	12	X
Brazil	+	+	+	●	●	X
Colombia	+	+	+	○	○	X
Russia	○	○	○	●	○	X

Source: OECD (2014) Survey on Public Procurement.

StatLink  <http://dx.doi.org/10.1787/888933249082>

6.5 Impact

A review of the available literature indicates there is empirical evidence to justify SME support policies. In developed countries, SMEs are generally considered to have the edge over their larger competitors in terms of innovative solutions, better customer care and after-sales service, as well as a more flexible and responsive approach to changing needs of customers.¹⁴⁶ SMEs are more adaptable and responsive to the needs of purchasers,¹⁴⁷ can support the creation of new supply markets, respond well to supply market dominance and fragmentation,¹⁴⁸ and also that there are benefits to local economies from local sourcing.¹⁴⁹

The positive benefits from increasing SME participation in public procurement such as decreased influence of established networks of larger firms, which may seek to exclude SMEs through collusive or corrupt bidding practices or otherwise. In emerging economies, the role of the SMEs is equally crucial for contributing to the rejuvenation of local businesses and the provision of local access to services, as well as employment opportunities for remote communities.¹⁵⁰ The existing research suggests that the following policies have demonstrated benefits to improving SME participation in public procurement tendering:

1. Lot splitting and aggregation
2. Contracting agency professionalism: late payments, due process
3. Transparency & standardization – e-procurement procedures
4. Insurance against late payment
5. SME Leaders programme – Access to finance
6. ITC capacity building

Most small businesses are not yet sufficiently competitive within domestic markets. Soft policy instruments such as increasing transparency, improving financing and professionalism are perhaps more important than promoting the participation of small businesses in public procurement markets through offsets and price preferences. These without careful monitoring and evaluation, preferences can operate to undermine the competitiveness of public procurement markets and produce a distortive negative effect on the behaviour of businesses. More impact assessments should be undertaken both ex ante and through monitoring the effect of these measures, to ensure they are well targeted and demonstrably effective in meeting their objectives.

¹⁴⁶ cited in Caroline Nicholas and Michael Fruhmann. Small and Medium-Sized Enterprises Policies in Public Procurement: Time for a Rethink? Journal Of Public Procurement, Volume 14, Issue 3, 328-360 Fall 2014.

¹⁴⁷ Zheng, J., Walker, H. & Harland, C. (2006). "The Role of SMEs in Public Procurement: A Review of Literature and Research Agenda." [Online]. Available at <http://www.ipsera.com/assets/documents/57.pdf>.

¹⁴⁸ Caldwell, N. D. et al. (2004). "Promoting Competitive Markets: The Role of Public Procurement." In K. V. Thai et al. (Eds.), *Challenges in Public Procurement: an International Perspective* (pp. 315- 334). Boca Raton, FL: PrAcademics Press.

¹⁴⁹ Caroline Nicholas and Michael Fruhmann. Small and Medium-Sized Enterprises Policies in Public Procurement: Time for a Rethink? Journal Of Public Procurement, Volume 14, Issue 3, 328-360 Fall 2014.

¹⁵⁰ Ibid.

Chapter 7. Public procurement for “Manufacturing for Wellbeing”

7.1 Public procurement in the process of building new and rebuilding old industries

This report has demonstrated how public procurement policies can be a supporting tool in the process of building new and rebuilding old industries. The survey of policy instruments has shown that tender specifications and performance requirements can promote local firms and products to varying degrees depending on the availability of supplies locally. They need to be carefully calibrated overtime to avoid moral hazard among the business sector, and ultimately become internationally competitive even if they are only serving the domestic market.

Public procurement policies can also promote value for money and competition, which also have beneficial spillovers into the wider economy through incentivizing innovation, better pricing, improved infrastructure projects and a good use of public resources. Efficient public procurement also instills a sense of public confidence in government and economic management, through good use of public resources and professionalism and integrity in public office.

These different targets are not always compatible and complementary. This report had shown that the use of local content requirements and price preferences need to be carefully and temporarily implemented. They require independent monitoring and impact assessments to ensure policies are fine-tuned to suit changing market circumstances. The need for competition and value for money must be carefully balanced through careful and transparent auditing. This would allow for fine-tuning domestic preferences to graduate businesses away from these protections as they become more able to compete independently. This serves the ultimate goal of developing internationally competitive Omani manufacturing firms. Competition can also be enhanced closer cooperation with the Competition and Monopolies Prevention Centre.

7.2 How will public procurement policies operate together?

Strategic public procurement policies require careful coordination and cost-benefit analyses, based on pilot projects and on-going monitoring and evaluation. The following points should be considered:

- Ensuring harmonisation of tendering regulations, monitoring and evaluation among the Ministries: this will benefit businesses through increased transparency, consistency and certainty. This will involve the Tender Board, MOLA, the Ministry of Labour
- There is currently no harmonised monitoring mechanism in place for those that have to follow the Tender Board law, but do not have to issue tenders through the Tender Board. This should be the subject of further investigation.
- Streamline legal processes to avoid duplication: some of the Ministries are carrying out similar functions to MOLA
- Tender Board could set up an MoU with the Competition and Monopolies Prevention Centre to exchange information and cooperate on enforcement of market competition and remove unnecessary anti-competitive practices in public and private markets.
- Transparent auditing of the contract tender, evaluation and award process Contract monitoring is a crucial part of effective public procurement and a further study into this particular area could be beneficial in terms of promoting operational efficiency without exceeding budgetary provision.

7.3 Which institutions will be needed and will be able to implement?

- Audit Office
- MOCI
- Tender Board
- MOLA
- Ministry of Labour for enforcement of SME and Omanisation requirements
- Ministries' procurement policy makers
- The Competition and Monopolies Prevention Centre
- Riyada
- Tanfeedh
- Ithraa

7.4 The cost and impact of new procurement policies in Oman

COST	IMPACT
Redrafting law and regulations	Strong positive impact – effectiveness; legal certainty and coherence
Increasing implementation and enforcement, with higher penalties	Strong positive impact: attaining policy objectives, revenue from penalties
Monitoring, evaluation and impact assessment	Strong positive impact on effect policymaking
Continuous training and professionalism	Strong positive impact on implementation
Higher prices from domestic preferences	Case by case impact assessment required
Financial loss on unsuccessful innovation or early adopter procurement	Case by case impact assessments required
Capacity building for MSMEs to tender for public contracts	Strong positive impact on MSME participation in public procurement tendering

7.5 Quick-win public procurement policies

- Enforcement Drive, with stronger penalties for non-compliance with Omanisation / ICV
- Tender specifications and performance requirements: recyclates, healthy food, innovation
- Bid-Splitting – issue guidelines
- Joint bidding – issue guidelines
- Eliminate Registration fees for SMEs
- Eliminate tender document fees for SMEs
- Introduce late payment penalties and insurance schemes

7.6 Medium and long-term public procurement planning

- Legislative changes to Tender Law
 - Clarify and narrow exemptions to Tender Law

- Improved due process: bid challenge, disqualifications, exclusions
- Stronger penalties
- Legal harmonisation in application of Tender law and monitoring across ministries
- Expanding the GCC pooled Procurement programme: meet 60% target; include medical devices
- Technical assistance / capacity building
- Procurement purchasing guarantees: Innovation: circular economy and the recylcate industry
 - new markets, early adopters, new suppliers
- Improved policy making from better data, monitoring and on-going evaluation reports

Chapter 8. Report Conclusions

Strategic public procurement and demands higher levels of policy capacity than industrial policy measures, because the margin of error in the procurement framework tends to be much narrower than industrial policy which has always been about trial-and-error and policy experimentation.¹⁵¹ Setting priority activities, products and technologies with detailed action plans and quality standards requires an important step-by-step approach towards building capacity in Oman's manufacturing sector.

The policy challenge is that there is not always compatibility among the various objectives that public procurement policy can potentially serve. The use of public procurement to further Oman's manufacturing strategy involves various trade-offs. A successful strategy carefully balances the need for efficiency, competition and value for money in public procurement, with the pursuit of the horizontal policy objectives of promoting new domestic industries, small and medium sized businesses and innovation.

This report has identified the following recommendations for improving the strategic use of public procurement law and policy:

8.1 Legislative and Administrative

- The Tender Law should be applied uniformly across all public entities, and amended to provide very narrow and explicitly prescribed exceptions and exemptions.
- Nurture a highly professionalized procurement cadre in the civil service to ensure effective implementation of complex, strategic procurement policies. Highly skilled staff require precisely defined remuneration and career promotion systems to attract quality applicants, complemented by compulsory permanent professional development.
- The technical, financial and administrative costs required to develop a competitive bid for a government contract can easily result in an advantage for large businesses over smaller ones. It is possible to minimize upfront cost-related barriers by streamlining the bidding documentation and information, particularly for small bids, to further reduce transaction costs. Waiving registration, bid bonds and tender documentation costs for small businesses will also serve to increase participation. Requiring delayed payment penalties and insurance will bolster the good practice already observed by SEZAD towards promoting SMEs.
- Preferential procurement policies involve significant public funds; their costs and performance need to be accounted for by an offset audit team. Yet one salient issue arising from the research is the dearth of available information and data on the costs and benefits of using government procurement to promote specific industrial strategies. This is a non-trivial issue, for it is not possible to draw firm conclusions about the impact of particular interventions through procurement contracts, if the data on these procurement do not exist or are not made available. Another key recommendation therefore is that the Oman Tender Board comprehensively collect and evaluate data relating the public procurement tendering, the impact of preferences and local content requirements, contract performance, life-cycle costs and value for money. This could be include exploring the possibility of establishing an open data system.
- The Sultanate could consider reinforcing a competition approach to public procurement by establishing a memorandum of understanding between the Tender Board and the Competition and Monopolies Prevention Centre to share market information and discuss potential cases of bid rigging or abuse of dominance relevant to tendering. This can increase small business participation

¹⁵¹ Rodrik, 2007.

in public procurement contracts, due to increased enforcement and legal certainty. Competition laws address cartels or bid rigging, and can also be applicable to public procurement bodies when they are undertaking an economic activity. A more transparent, coherent and competitive framework for potential bidders would particularly benefit smaller companies wishing to enter the lucrative procurement market.

- Although Oman is not a signatory party to the WTO GPA, there are other international trade rules that are applicable to public procurement policies regarding local content and performance requirements. Oman could choose to follow the US approach in the Buy America Act¹⁵² and include a 'saving clause' in its public procurement laws and regulations. Under Section 105, Chapter 83 of title 41 of the United States Code to increase the requirement for American-made content, to strengthen the waiver provisions, and for other purposes, there is a requirement that the provisions of that act shall be applied in a manner consistent with Oman's obligations under international and regional agreements.

8.2 Sectoral

- Omanisation policies, ICV and the price preferences are permitted under the Tender Law, and there are already various local content requirements in place. With careful cost-benefit analyses, some of these could potentially be increased in public procurement tender ICV requirements, with the view to attracting more FDI to these sectors seeking to benefit from the local preferences. Attracting new FDI into targeted sector, with stringently implemented ICV requirements, or through forming international consortia, could increase the opportunity for import substitution through public procurement in the medium term.

Without significant foreign investment in knowledge and production, protecting the small Omani market by favouring domestic companies and putting restrictions to foreign ones will not produce scale effects. Domestic goods will always be more costly than their imported counterparts. Moreover, protecting the internal market may be difficult with patent laws and international trade laws on non-discrimination, subsidies and trade related investment measures.

- Expanding and enforcing the GCC pooled procurement pharmaceutical programme to include targeted medical devices. This could provide a wider more stable market for both medical devices and pharmaceuticals. Deployment of the expansion of the GCC group procurement programme would require diplomatic negotiation and collective decision making among the GCC which is a medium term strategy and requires political will. Even without Saudi Arabia's participation, the other countries of the GCC provide a stable market for Omani exports that is larger than the domestic market.
- Oman's public procurement policies could play an important catalyst promoting the frankincense and health food industry, particularly in schools, hospitals and government institutions. In the short to medium-term, an intersectoral working group should be established incorporating: public procurement, agriculture, education, public health, economic development and technology to establish systematic action plan and design clear tender specifications for fresh healthy local products and services that conform to sustainability and food health and safety standards. Through joint bids, lot-splitting and guaranteed purchase commitments, public procurement contracts could provide a market of significant interest to local companies, especially SMEs.
- Omani public procurement could also provide conditions that stimulate the development of local firms, products and innovative solutions in recycles and waste management. This would require

¹⁵² The "Buy American Improvement Act of 2017".

careful and on-going dialogue with stakeholders including the private sector, procurement officials and the privatized innovation centers. Such an approach addresses early adoption of products that have been commercialized, but have not yet been on the market for a long time, as well as innovative products that would be developed as a result of the procurement process. In addition, ensuring the procurer possesses the experience and technical ability to conduct a process of innovative procurement, pre-commercial procurement, or research and development project will play a key role in achieve a circular economy in Oman.

- Oman could, as in many countries, attach greater ICV requirements for solar energy generation projects, including to a feed-in tariff scheme. A feed-in tariff would guarantee grid access to small scale renewable energy producers, long term purchasing contracts with electricity utilities and fixed purchase prices that are independent from the existing market price. The innovation risk is born by the government or the end consumers, who reimburse the electricity utilities for the price premium that the utilities then pay to renewable energy generators. However, these programmes must ensure that they comply with Oman's international trade obligations under the WTO and RTAs.

In sum, this report has indicated that there are various public procurement policy changes that the Sultanate could consider to improve the strategic use of public procurement to diversify the manufacturing sector and promote SMEs. This range from policies to increase lot-splitting and joint-bidding, to using public procurement to promote new sectors such as healthy food, fragrances and recyclates.

This report confirms existing evaluations indicating that the strategic use of public procurement requires a high quality cadre of professional government officials capable of conducting such complex tendering. The law and implementing regulations should be applied harmoniously across the different government entities. Equally, strategic procurement requires thorough monitoring, evaluation and enforcement. Pilot projects are a useful tool for phased implementation and cost-benefit analyses. Data should be carefully collected and analysed to ensure the best use of public resources and careful identification of the most effective tool for meeting specific policy objectives. The long term enduring goals of competition and value for money should not be compromised without a good evidence base and long-term rationale.